**STATE OF MINNESOTA**
**IN COURT OF APPEALS**
**A09-1771**

James Corriveau,
Appellant,

vs.

Washington Mutual Bank,
Respondent.

**Filed May 18, 2010**
**Affirmed**
**Harten, Judge***

Anoka County District Court
File No. 02-CV-08-7136

James Corriveau, Anoka, Minnesota (pro se appellant)

Joseph J. Dudley, Jr., Steven C. Opheim, Mark K. Thompson, Dudley & Smith P.A., St. Paul, Minnesota (for respondent)

Considered and decided by Wright, Presiding Judge; Ross, Judge; and Harten, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

**HARTEN**, Judge

Appellant, a mortgagor, challenges the district court's denial of his motion to rescind the settlement agreement he entered into with respondent, the mortgagee. Because we see no error of law in the denial, we affirm.

## FACTS

Appellant James Corriveau is in the business of buying and renting out properties. In 2005, he contracted with respondent Washington Mutual Bank for mortgages and promissory notes on two parcels of property, referred to as the Sixth Avenue property and the Greenhaven property. Each of the promissory notes provided, in a prepayment addendum, that appellant could at any time prepay the notes in full or in part, but that a prepayment penalty would be imposed.

In 2008, after appellant defaulted, respondent began foreclosure proceedings.[1] Appellant obtained a temporary restraining order. In November 2008, the parties resolved the matter with a settlement agreement, the details of which their attorneys explained, on the record, to the district court.

The agreement provided that: (1) the $125,000 appellant had deposited with the court be paid to respondent; (2) appellant would pay respondent $61,684.20 by 1 December 2008; (3) appellant would pay $70,000 plus interest "by June 30th [2009] or upon the sale of the Sixth Avenue Property, whichever is first . . . ."; (4) the $70,000

[1] In connection with these proceedings, respondent had the properties appraised. Respondent did not share the appraisals with appellant, and they are not part of the record.

would bear interest of 5.62%; (5) the total, without interest, was $256,684.20 ($125,000 + $61,684.20 + $70,000); (6) appellant would sign over his interest in an escrowed $3,029.37; and (7) appellant would sign a confession of judgment stating that, in the event of default, the entire sum of $316,156, less any payments already made, would become due and payable to respondent.

Respondent's attorneys told the district court that respondent had "legal remedies and contractual remedies under the promissory notes and mortgages in the event of a future default and . . . those are not being waived by this structured settlement here today" and that "[i]t's not the intent of this agreement to alter the documents between the parties." Appellant's attorney replied, "Correct." Neither party specifically mentioned the pre-payment penalty.

On 2 March 2009, appellant asked respondent for a payoff statement because he had a purchaser for the Sixth Avenue property and hoped to close the sale on 15 April. On 23 March, before respondent provided the payoff statement, appellant informed respondent that the sale had been lost.

On 10 April 2009, respondent provided a payoff statement, which included the prepayment penalty of $153,180.55 for the early sale of the Sixth Avenue property, increasing the amount appellant owed to $1,088,512.46.

In June 2009, respondent moved the district court to enforce the settlement agreement, which had never been reduced to writing and signed. Appellant moved for its rescission. Following a hearing, the district court granted respondent's motion, denied

appellant's motion, and entered and stayed a judgment of $126,442.43 plus interest on $70,000 against appellant.[2]

Appellant argues that the district court erred in denying his motion to rescind.

## D E C I S I O N

### Standard of Review

The interpretation of a settlement agreement is an issue of law subject to de novo review. *In re Crablex, Inc*., 762 N.W.2d 247, 255 (Minn. App. 2009), *review denied* (Minn. 29 April 2009). Appellant advances three grounds for rescission: his own unilateral mistake, respondent's failure to inquire, and respondent's breach of the agreement. None of the three presents a basis for rescission.

### 1. Unilateral Mistake

The district court found that appellant made a unilateral mistake when, "believing that [respondent] consented to the early sale [of the Sixth Avenue property] and loan payoff, [he] expected that the pre-payment penalty clause of the Note and Mortgage would be waived if the [Sixth] Avenue Property was sold prior to June 30, 2009." The district court concluded that appellant's unilateral mistake was not a valid basis to rescind the agreement.

A contract may be rescinded because of a unilateral mistake only if enforcement would impose an oppressive burden on the party seeking rescission and rescission would

[2] Respondent was actually owed $316,156 plus interest on $70,000; of this amount, appellant had paid $125,000 + $61,684.20 + $3,029.37, a total of $189,713.57. Thus, the total owed, $316,156, less the amount paid, $189,713.57, was the amount of the judgment, $126,442.43.

impose no substantial hardship on the party seeking enforcement. *S. Minn. Mun. Power Agency v. City of St. Peter*, 433 N.W.2d 463, 471 (Minn. App. 1988). Appellant argues that no hardship would be imposed on respondent by rescission of the settlement agreement because appellant would not seek to have the $125,000 given to respondent returned to the court, so respondent would be faced only with the costs of litigation. But having to litigate a matter presumably resolved by a settlement agreement explained in court on the record several months earlier would itself be a hardship.

Appellant also argues that he will face hardship if the settlement agreement is enforced because he will have to pay the prepayment penalty. But appellant agreed to the prepayment penalty as a term of the original mortgages and associated promissory notes he obtained from respondent in 2005, and he agreed in court that the settlement agreement did not change any of those terms.[3]

**2. Respondent's Failure to Inquire**

Appellant asserts that respondent had a duty to inquire as to whether appellant knew that the prepayment penalty was not waived by the settlement agreement because the facts revealed a presumption of error. *See Bauer v. Am. Intern. Adjustment Co.*, 389 N.W.2d 765, 767 (Minn. App. 1986), *review denied* (Minn. 24 Sept. 1986) (offeree may have a duty to inquire when the circumstances reasonably raise a presumption of error;

[3] Appellant also argues that the district court erred in considering appellant's status as a sophisticated real estate professional because his status is not relevant to rescission. But appellant claimed to the district court that he was unaware that respondent planned to enforce the prepayment penalty clause. Appellant's status as a sophisticated real estate professional was relevant to his ability to understand the terms of the mortgages and notes.

offeree is "not . . . permitted to snap up an offer that is too good to be true" without inquiring). But the circumstances appellant lists would not have raised such a presumption or presented an offer "too good to be true."

First, appellant says that "the sale of the [Sixth] Avenue property was expressly anticipated by both parties as a term of the settlement." But the settlement agreement provided appellant would pay $70,000 by 30 June or the date of sale of the Sixth Avenue property, whichever occurred first: thus, appellant would have been liable for the $70,000 payment on 30 June even if the Sixth avenue property had not been sold. What respondent anticipated was appellant's payment by 30 June, not the sale of the property.

Second, appellant says that "the appraisal [of the Sixth Avenue property] which was never disclosed by respondent was high." Why a high appraisal on a piece of property should have imposed a duty on respondent to inquire if appellant knew that the prepayment penalty had not been waived is unexplained.

Third, appellant says that respondent "knew that the anticipated sale of the [Sixth] Avenue property would never have sold for a price high enough to pay the $70,000 settlement payment and the $153,000 prepayment penalty." Again, because the settlement agreement gave appellant the option of selling the Sixth Avenue property or raising the $70,000 in some other way before 30 June, and respondent did not know either how appellant planned to raise the $70,000 or when the property would sell, a duty to inquire about the prepayment penalty could not reasonably arise.

Finally, appellant says "[r]espondent knew that appellant could not even raise the $70,000 without selling the [Sixth] Avenue property." But appellant cites only to his

own affidavit as support for this, and the settlement agreement anticipated that the $70,000 could and would come from another source if the property had not sold by 30 June.

None of the circumstances cited by appellant imposed a duty on respondent to inquire if appellant knew the prepayment penalty would be enforced: appellant's offer to pay $70,000 by 30 June or at the sale of the Sixth Avenue property, whichever came first, was not "an offer too good to be true." Respondent's failure to inquire is not a basis for rescission.

**3. Respondent's Breach[4]**

Appellant claims that the settlement agreement should be rescinded because respondent breached it by not providing a payoff statement until six weeks after appellant asked for it. But respondent provided a payoff statement on 10 April, in time for a sale that was to have closed on 15 April. The record provides no support for appellant's implications that the prospective sale of the Sixth Avenue property was lost because respondent did not timely provide a payoff statement or that respondent knew the sale was contingent on its providing a payoff statement by a particular date.

Finally, "only a *material* breach of a contract or a substantial failure in its performance justifies a party thereto in rescinding it." *Heyn v. Braun*, 239 Minn. 496, 501, 59 N.W.2d 326, 330 (1953). Appellant reiterates the argument that the sale of the Sixth Avenue property was an essential element of the settlement agreement, but, because

[4] Although the district court did not refer to this argument in its opinion, the hearing transcript shows that, contrary to respondent's assertion, the argument was raised to the district court.

appellant was free to obtain the money due respondent on 30 June from any source, the sale of the property was not an essential element.

Appellant presents no convincing basis for rescission of the parties' settlement agreement.

**Affirmed.**