STATE OF MINNESOTA
IN COURT OF APPEALS
A07-268

Gary J. N. Aamodt,
Respondent,

vs.

Arthur Renander, et al.,
Appellants.

Filed March 25, 2008
Affirmed
Worke, Judge

Hennepin County District Court
File No. 27-CV-065-05656

George E. Warner, Jr., Bernick & Lifson, P.A., 5500 Wayzata Boulevard, Suite 1200, Minneapolis, MN 55416 (for respondent)

Jonathan D. Miller, Karl J. Yeager, Meagher & Geer, P.L.L.P., 33 South Sixth Street, Suite 4400, Minneapolis, MN 55402 (for appellants)

Considered and decided by Hudson, Presiding Judge; Worke, Judge; and Poritsky, Judge.[*]

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

WORKE, Judge

On appeal from a judgment and posttrial orders regarding repayment of a promissory note, appellants argue that the district court erred in (1) considering extrinsic

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

evidence, in violation of the parol-evidence rule, when determining the plain meaning of the promissory note; and (2) finding that appellant-wife is liable for the loan. We affirm.

FACTS

In 2000, respondent Gary J.N. Aamodt made two loans to appellants, Arthur and Zara Renander, totaling $49,500. Following the first loan of $37,000, appellant-husband signed a promissory note providing:

> For Value Received, [appellant-husband] hereby promises to pay [respondent] the sum of [$37,000] plus interest incurred from one certain line of credit at the US Bank of Minneapolis, MN. [Appellant-husband] agrees to repay this loan from the first proceeds of land sales in Coralville, Iowa. If this note remains unpaid beyond seventy-five days, [appellant-husband] agrees to secure the balance, accrued interest plus any other costs that be incurred by this loan.

Several months later, respondent made the second loan to appellants, in the amount of $12,500. There neither was a promissory note signed reflecting the second loan obligation nor was the original promissory note amended to reflect the total loan amount. The loan remained unpaid. In 2005, respondent initiated a lawsuit seeking repayment. The district court concluded that the loans were due and owing and entered judgment in favor of respondent. The district court also concluded that appellant-wife was jointly and severally liable for the loans. Appellants challenge the judgment and the denial of their motion for a new trial and amended findings.

D E C I S I O N

The district court has discretion to grant a new trial; therefore, we will not disturb the decision absent a clear abuse of discretion. *Halla Nursery, Inc. v. Baumann-Furrie &*

Co., 454 N.W.2d 905, 910 (Minn. 1990). "Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses." Minn. R. Civ. P. 52.01.

Appellants argue that the district court clearly erred in admitting extrinsic evidence to determine the terms of the parties' agreement. "The construction and effect of a contract is [] a question of law unless the contract is ambiguous." *Denelsbeck v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003). If the contract is ambiguous, its interpretation is a question of fact for the fact-finder. *Id.* "A contract is ambiguous if, based upon its language alone, it is reasonably susceptible of more than one interpretation." *Id.* (quotation omitted). "Absent ambiguity, the terms of a contract will be given their plain and ordinary meaning and will not be considered ambiguous solely because the parties dispute the proper interpretation of the terms." *Knudsen v. Transp. Leasing/Contract, Inc.*, 672 N.W.2d 221, 223 (Minn. App. 2003), *review denied* (Minn. Feb. 25, 2004). "[W]hen a contract is unambiguous, a court gives effect to the parties' intentions as expressed in the four corners of the instrument, and clear, plain, and unambiguous terms are conclusive of that intent." *Id.* When "a written agreement is ambiguous or incomplete, evidence of oral agreements tending to establish the intent of the parties is admissible." *Alpha Real Estate Co. of Rochester v. Delta Dental Plan of Minn.*, 664 N.W.2d 303, 312 (Minn. 2003). Extrinsic evidence may not be used to vary the terms of a written contract when the contract is neither incomplete nor ambiguous. *Id.*

The district court found that the parties' complete agreement was not in writing. The court found that the promissory note, which was signed after the parties reached an oral agreement regarding the loan, "does not reflect the complete contract terms reached" and provides only "some of the terms at variance with [the] oral contract." Minimally, the promissory note fails to include the total amount loaned ($49,500), the interest rate, the procedure for securing costs, and whether appellant-wife was liable. Appellants argue that the lawsuit was premature because under the plain meaning of the promissory note the loan was not due until the sale of the Iowa property. But the promissory note also provides that if the note went unpaid for more than 75 days, appellant-husband would secure the balance. It is unclear whether the parties intended the loan to be repaid at that time. It is also unclear whether the parties intended repayment to occur 75 days after the sale of the Iowa property or 75 days after the date of the loan. This fact alone creates an ambiguity in the promissory note. The district-court's finding that the promissory note was incomplete—and therefore ambiguous—is not clearly erroneous, and the admission of extrinsic evidence to determine the parties' intent was not an abuse of discretion.

Finally, based on the record, the district-court's finding that the loans were due and owing is not clearly erroneous. The district court found that the preponderance of the evidence supports respondent's position—that appellants sought the loan on the representation that it was a short-term, personal loan to be repaid within 30-60 days, and within the range of 75 days—and that any evidence to the contrary was not credible. *See*

Minn. R. Civ. P. 52.01 ("[D]ue regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses.").

Appellants also argue that the district court clearly erred in finding that appellant-wife is liable for the loan. The district court found that "[appellant-wife's] agreement to pay occurred at the commencement of the parties' agreement and therefore was not barred by the statute of frauds." Appellant-wife was present at the meetings when the loans were requested and at later meetings when the parties discussed the fact that respondent needed the loans repaid. The district court also found the testimony of respondent and his wife that they believed appellant-wife was involved in the transaction from the very beginning to be credible. *See id.* The record supports the district court's finding that appellant-wife was liable for the loan as an original promise; therefore, no statute-of-frauds issue exists. *See* Minn. Stat. § 513.01 (2) (2006) (providing that unless the promise is in writing, "[n]o action shall be maintained . . . to answer for the debt, default or doings of another."); *see also Allison v. Best Recycling & Disposal, Inc.*, 565 N.W.2d 437, 438-39 (Minn. App. 1997) (stating an original promise, one that directly or primarily benefits the promisor, is not covered by the statute of frauds), *review denied* (Minn. Aug. 26, 1997).

Affirmed.