STATE OF MINNESOTA
IN COURT OF APPEALS
A10-596

Lakeland Construction Finance, LLC,
Respondent,

vs.

Noble Construction & Development, Inc., et al.,
Defendants,

Brian D. Brix,
Appellant.

Filed December 14, 2010
Affirmed
Minge, Judge

Stearns County District Court
File No. 73-CV-08-16485

Karl E. Robinson, Joel A. Hilgendorf, Hellmuth & Johnson, PLLC, Eden Prairie, Minnesota (for respondent)

John E. Mack, Mack & Daby, P.A., New London, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Minge, Judge; and Ross, Judge.

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

MINGE, Judge

Appellant mortgage holder Brian D. Brix challenges the district court order granting summary judgment to respondent mortgage holder Lakeland Construction

Finance, LLC. Brix argues that the district court erred in applying the doctrine of mutual mistake to void Lakeland's quitclaim deed conveying its interest in certain land to Brix. We conclude that summary judgment was proper because there is not a dispute of material fact that there was a mutual mistake, or, in the alternative, a unilateral mistake justifying rescission.

FACTS

In March 2006, Noble Construction & Development, Inc. (Noble) granted two mortgages on property in Avon to respondent Lakeland Construction Finance, LLC (Lakeland), to secure indebtedness totaling $785,000. Lakeland recorded its mortgages in April 2006.

In March 2008, pursuant to a debt settlement agreement, Noble granted appellant Brian D. Brix a mortgage to secure payment of $270,000. The mortgage instrument provided that the property subject to the mortgage was encumbered by "[a] mortgage given by [Noble] to [Lakeland] to secure payment amount of $750,000." Brix recorded the mortgage the same month.

In October 2008, after Noble defaulted on its loans, Lakeland filed suit against Noble to establish the balance due on its loans and the priority of the mortgages, and to foreclose by action. Lakeland obtained a pre-foreclosure title report from Stewart Title of Minnesota (Stewart). Lakeland's complaint incorporated the Stewart report's description of the property encumbered by its mortgages. Because the report disclosed Brix's interest as a mortgagee, he was named as a defendant in an initial amended complaint.

Due to replatting and multiple parcels, the legal descriptions in the Lakeland and Brix mortgage instruments were different. In the Lakeland mortgages, the property was described as "Outlot C, Waters Edge." In the Brix mortgage, the property was described as lots in "Block[s] 1 . . . [to] 4 of Phase III and Outlot A, Waters Edge."[1] Stewart's encumbrance report was for lots in "Block[s] 1 . . . [to] 4 of Waters Edge Three." Upon receiving the amended complaint, Brix noticed that the legal description in his mortgage referred to the mortgaged property as being in Phase III, Waters Edge when the proper designation was "Waters Edge Three." Brix also noticed that his mortgage encumbered property described as "Outlot A, Waters Edge" and that the complaint's legal description of the real estate covered by Lakeland's mortgages did not include any reference to an "Outlot A." Brix filed an answer, asking the district court to determine the priority between Lakeland's mortgage and his mortgage, and to reform the description of land in his mortgage to correct a clerical error by deleting the plat reference to "Phase III," and adding "Three" so that his mortgage covered lots in "Block[s] 1 . . . [to] 4, and Outlot A, Waters Edge Three."

In March 2009, in an effort to resolve the matter with Brix, Lakeland offered to stipulate to the reformation of Brix's mortgage to correct the plat reference if Brix in turn stipulated to the priority of Lakeland's mortgages. Brix replied that the agreement was acceptable but asked Lakeland, in addition, to execute a quitclaim deed for Outlot A in Waters Edge Three. Lakeland, relying on the Stewart report, did not believe that it had a

[1] The record indicates that part of the disputed property is Lot 13, Block 4 of Waters Edge Three. Because on appeal, Lakeland does not claim any interest in Lot 13, that lot is not included in the discussion in this opinion.

mortgage interest in any "Outlot A," executed the quitclaim deed, and returned it to Brix's attorney. About two weeks later, however, Stewart informed Lakeland that Stewart's October 2008 report incorrectly described the land encumbered by Lakeland's mortgage and that the mortgaged land (Outlot C of Waters Edge) included what was replatted as Outlot A of Waters Edge Three. Significantly, this newly designated Outlot A consists of 16.61 acres of land and is larger than all the lots in Blocks 1 to 4 that are otherwise encumbered by Lakeland's mortgages. Although no explanation is provided as to the cause of the Stewart error in the description, we note that the land in question and neighboring land has been platted as Waters Edge, Waters Edge Two, and Waters Edge Three; that from the record it appears that each plat included outlots with differing letter designations; and that Waters Edge Three included parts of Waters Edge and Waters Edge Two.

Following discovery of the mistake, Lakeland advised Brix that he was no longer authorized to record the quitclaim deed and demanded its return. However, Brix recorded the deed. Lakeland then again amended its complaint, adding a claim for declaratory relief that it held a senior mortgage interest in Outlot A of Waters Edge Three and asking the district court to void the quitclaim deed. Brix answered and counterclaimed, asserting that Lakeland had agreed that it had no interest in, and by its quitclaim deed had released any interest it may have had in, Outlot A, Waters Edge Three. Both parties moved for summary judgment. The district court granted Lakeland's request for summary judgment, voiding the quitclaim deed on the grounds of mutual mistake. This appeal follows.

D E C I S I O N

The issue before this court is whether the district court erred in granting summary judgment voiding the quitclaim deed.

On appeal from summary judgment, we ask whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Summary judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. Under Minnesota law, "there is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997); *see Hunt v. IBM Mid Am. Emp. Fed. Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986) (providing that the non-moving party has the burden to "provide the court with specific facts indicating that there is a genuine issue of fact").

Any dispute over a material fact must be "genuine." In other words, summary judgment is proper even where there theoretically is "a fact issue for the jury, [but] viewing the facts in a light most favorable to [the non-movant], *no reasonable jury* could find" in favor of the non-movant. *Culberson v. Chapman*, 496 N.W.2d 821, 826 (Minn. App. 1993) (emphasis added). No genuine issue of material fact exists "[w]here the

record taken as a whole could not lead a *rational* trier of fact to find for the nonmoving party." *DLH, Inc.*, 566 N.W.2d at 70 (emphasis added) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587, 106 S. Ct. 1348, 1356 (1986)).

"Rescission of a contract is an equitable remedy." *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 779 N.W.2d 865, 872 (Minn. App. 2010), *review granted* (Minn. May 26, 2010). We review a district court's grant of an equitable remedy for a clear abuse of discretion. *Id.*

Mutual Mistake

In general, a party to a contract may avoid the contract if there is a mutual mistake concerning a material fact. *Winter v. Skoglund*, 404 N.W.2d 786, 793 (Minn. 1987). "Where a mistake of both parties at the time a contract was made as to a basic assumption on which the contract was made has a material effect on the agreed exchange of performances, the contract is voidable by the adversely affected party unless he bears the risk of mistake . . . ." Restatement (Second) of Contracts § 152(1) (1981). A mistake is a belief that is not consistent with the facts, and a "'[m]utual mistake' consists of a clear showing of a misunderstanding, reciprocal and common to both parties, with respect to the terms and subject matter of the contract, or some substantial part thereof." *Carpenter v. Vreeman*, 409 N.W.2d 258, 261 (Minn. App. 1987).

But a party may not avoid a contract on the grounds of mutual mistake when that party assumed the risk of mistake. *Winter*, 404 N.W.2d at 793. In general, a party bears the risk of mistake when: (1) the agreement of the parties allocates the risk to him; (2) he is aware, at the time the contract is made, that he has only limited knowledge with respect

to facts but treats this limited knowledge as sufficient; or (3) the court allocates the risk to him on the ground that it is reasonable in the circumstances. Restatement (Second) of Contracts § 154 (1981). A mistake relating to the attributes, quality, or value of the subject of a sale is generally a risk assumed by the buyer and does not warrant a rescission. *Costello v. Sykes*, 143 Minn. 109, 111, 172 N.W. 907, 908 (1919). In contrast, where the mistake goes to "the very nature" of the subject property, rescission is an appropriate remedy. *Gartner v. Eikill*, 319 N.W.2d 397, 399 (Minn. 1982).

Here, the undisputed record indicates that Lakeland was planning a foreclosure by action. It apparently attempted to check title to the property subject to its mortgage before suing. It engaged Stewart to check ownership and encumbrances. Stewart's report used a legal description that consisted of lots in Blocks 1 to 4 of Waters Edge Three, noting that the "description was created from Outlot C, Waters Edge, and Outlot A, Waters Edge Two . . . ." Based on the report from Stewart, Lakeland mistakenly did not recognize that it had a mortgage interest in Outlot A, Waters Edge Three. Lakeland relied on the Stewart description when it filed suit against Noble and Brix. Lakeland also relied on the Stewart description when it drafted and negotiated the stipulation with Brix, and signed and returned the quitclaim deed to Brix.

The record is less clear regarding Brix's belief when he signed a settlement agreement and forwarded the quitclaim deed to Lakeland. Brix argues that Lakeland has the burden of establishing by clear and convincing evidence that he (Brix) mistakenly believed that Outlot A was not included in the area subject to the Lakeland mortgages. Brix points out this is an appeal from summary judgment, that there is simply no

evidence of his knowledge or belief, and that because this is an issue of material fact, summary judgment was improper. In his answer, Brix denies that he made a mistake satisfying the standard for rescission due to mutual mistake of fact. But Brix does not elaborate; he does not provide any explanation regarding his understanding as to the reach of Lakeland's mortgages, whether he recognized that by signing the deed Lakeland would be releasing Outlot A from the lien of its mortgage, or whether he innocently thought Lakeland had no mortgage interest in Outlot A.

Brix argues that he had good reason to believe, based on the replatting and inconsistent land descriptions in the various mortgage instruments and the Stewart report, that his mortgage interest in Outlot A was superior to respondent's, and thus he negotiated in good faith. Yet the record shows that Brix indicated an agreement that Lakeland had no interest in the property described in the quitclaim deed. For example, on May 11, 2009, Brix's trial attorney signed a copy of the parties' stipulation stating, "Currently no factual or legal basis exists for [Lakeland] to assert that [Lakeland] has any interest in the land described as . . . Outlot A, Waters Edge Three, Stearns County, Minnesota." This provision of the stipulation is mistaken. It is a fundamental error. It supports the district court's determination that both parties expressed a belief that Lakeland had no interest in Outlot A, Waters Edge Three, and that as a result, there was a mutual mistake of material fact regarding the parties' underlying assumption in preparing, signing, and delivering the quitclaim deed. In resisting summary judgment, Brix cannot silently stand by the denial in his pleadings that he made a mistake and put

Lakeland to its proof. On this record, the denial is not sufficient to create an issue of material fact sufficient to defeat summary judgment.

Brix argues that Lakeland assumed the risk of mistake. The common law rule is that when the mistake goes to the "very nature" of the property as opposed to the attributes, quality, or value, relief is available. *See Gartner*, 319 N.W.2d at 399 (providing that the parties did not assume the risk where the mistake that land could be developed went to the very nature of the property, as opposed to just the value); *Sherwood v. Walker*, 33 N.W. 919, 923 (Mich. 1887) (providing that the mistake that a cow was barren "went to the very nature of the thing" as opposed to the "mere quality of the animal").

Here, whether Lakeland had a mortgage interest in Outlot A, Waters Edge Three is a fundamental matter. And, because the various outlot designations and the replatting of land created a complexity, the mistake was not apparent. Lakeland did not negligently rely on old information or fail to investigate. Rather, Lakeland had obtained an encumbrance report from Stewart. Lakeland was diligent. Although the report carried a disclaimer that it was not title insurance and a limitation on liability, this does not indicate a knowing assumption of a level of risk that precludes a finding of mutual mistake. We conclude that there was no issue of material fact, that the district court did not err in determining that Lakeland did not assume the risk of mistake, and that rescission of the quitclaim deed based on mutual mistake was proper.

Unilateral Mistake

We note that in the alternative, if Brix had reason to believe that Lakeland did have an interest in Outlot A, rescission was proper on the grounds of unilateral mistake.

> Where a mistake of one party at the time a contract was made as to a basic assumption on which he made the contract has a material effect on the agreed exchange of performances that is adverse to him, the contract is voidable by him if he does not bear that risk of mistake . . . and (a) the effect of the mistake is such that enforcement of the contract would be unconscionable, or (b) the other party had reason to know of the mistake . . . .

Restatement (Second) of Contracts § 153 (1981). "A unilateral mistake in entering a contract is not a basis for rescission unless there is ambiguity, fraud, misrepresentation, or where the contract may be rescinded without prejudice to the other party." *Speckel by Speckel v. Perkins*, 364 N.W.2d 890, 893 (Minn. App. 1985). A party may avoid a contract for his own mistake of fact when the mistake was caused by inequitable conduct of the other party. *North Star Ctr., Inc. v. Sibley Bowl, Inc.*, 295 Minn. 424, 426, 205 N.W.2d 331, 332 (1973); *see also Nadeau v. Maryland Cas. Co.*, 170 Minn. 326, 329, 212 N.W. 595, 598 (1927) ("[I]n matters of contract equity prevents one from taking knowing and unconscionable advantage of another's mistake for the purpose of enriching himself at the other's expense.")

Here, there is no evidence that Brix has taken any action or otherwise relied on the quitclaim deed. Thus, there is no evidence of any prejudice to Brix other than the loss of the windfall of having an unexpected first mortgage position on Outlot A. Furthermore, if the mistake is not mutual and Brix believed that Lakeland's mortgages covered or

possibly covered Outlot A, it was inequitable for Brix to take advantage of the mistake by stipulating that Lakeland did not own such an interest, and then receiving a windfall at Lakeland's expense.

Finally, a party may obtain rescission as relief for unilateral mistake if enforcement of a contract would be unconscionable. Unconscionability is defined as "extreme unfairness . . . assessed by [the] objective standard: . . . contractual terms that unreasonably favor the other party." *Black's Law Dictionary* 1663 (9th ed. 2009).

Here, the record indicates that if the quitclaim deed is effective, Lakeland would give up and Brix would receive a first-priority mortgage interest in 16.61 acres of land in exchange for stipulating that Lakeland's mortgages were otherwise senior to Brix's. But the priorities are undisputed: Lakeland recorded its mortgages in April 2006 and Brix recorded his mortgage in March 2008. *See Citizens State Bank v. Raven Trading Partners, Inc.*, 786 N.W.2d 274, 278 (Minn. 2010) (providing that the priority of a mortgage is based on the date of recording (citing Minn. Stat. §§ 386.41, 507.34 (2008)). And Brix's mortgage instrument provides that the subject property was free from all encumbrances except for "[a] mortgage given by [Noble] to [Lakeland] in the original amount of $750,000." Lakeland's senior position is clearly established on the record. Brix fails to allege any facts showing that, in the absence of Lakeland's mistake, his mortgage may be superior to Lakeland's. Because Lakeland would receive negligible value in exchange for deeding its mortgage interest in Outlot A, Waters Edge Three, the quitclaim deed unreasonably favors Brix. This undisputed factual situation supports rescission of the deed if Brix was not mistaken and the mistake was unilateral.

We conclude that the district court did not err by granting summary judgment to Lakeland and voiding the quitclaim deed conveying Lakeland's interest in Outlot A to Brix on the grounds of mutual mistake. In the alternative, if the mistake was not mutual, we conclude that the record warrants rescission of the deed on the grounds of unilateral mistake.

Affirmed.

Dated: