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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1662**

Jarod J. Pick, et al.,
Appellants,

vs.

Central Land Title Guarantee Co.,
Respondent,

Washington Mutual FA,
Respondent,

Citizens State Bank of Waverly,
Respondent.

**Filed May 23, 2011
Affirmed
Connolly, Judge**

Wright County District Court
File No. 86-CV-08-147

Kevin K. Shoeberg, Kevin K. Shoeberg, P.A., Woodbury, Minnesota (for appellants)

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Citizens State Bank of Waverly)

Considered and decided by Connolly, Presiding Judge; Johnson, Chief Judge; and Ross, Judge.

UNPUBLISHED OPINION

CONNOLLY, Judge

Appellants, a mother and a son who entered into a purchase agreement for the sale of the mother's real property to the son, brought this action against respondents, the title company that arranged the sale, the mortgagee that provided the son's financing, and a subsequent mortgagee, arguing that appellants did not intend the entire property to be transferred. Respondents moved for summary judgment. Because no genuine issue of material fact precludes summary judgment and the district court did not err in granting judgment to respondents as a matter of law, we affirm.

FACTS

In 1990, appellant Lois Pick purchased 21 acres of property. Her purchase included two parcels: a 19.68 acre parcel that had property identification number (PID) 217000123202, and a 1.32 acre parcel that had PID 217000123201. Her property had only one street address, and the deed to the property had a unified legal description that encompassed both parcels and indicated no division between them. In 2000, Lois Pick obtained a mortgage on the entire property, identified by a copy of its unified legal description.

In 2001, Lois Pick and her son, appellant Jarod Pick, entered into a purchase agreement whereby he agreed to buy the property, identified only by its street address, from her for \$320,000. An appraisal done in connection with the transfer identified the

property by its street address and its unified legal description, but gave its total size as only 19.68 acres, not 21 acres. Respondent Central Land Title Guarantee Co. (CLT) was retained to do the closing. Jarod Pick provided CLT with a copy of the unified legal description obtained from the abstract of title caption.

At the closing in December 2001, Lois Pick as seller signed the Warranty Deed, which also identified the property by the unified legal description. A Department of Housing and Urban Development (HUD) Settlement Statement indicated that her mortgage, which encumbered both parcels, had been paid off. Jarod Pick signed a Certificate of Real Estate Value, which gave the identification numbers of both parcels and identified the property by the unified legal description. He also signed a mortgage for \$256,000 from respondent Washington Mutual FA (WM), which identified the property by its street address and the unified legal description. Both Jarod and Lois Pick signed a certificate of sanitary system compliance, which identified the property by its street address and both identification numbers.

In March 2002, Jarod Pick obtained a second mortgage on the property, for \$10,000, from respondent Citizens State Bank of Waverly (CB). The property was again identified by its unified legal description.

In early 2002, Jarod Pick received the 2001 property tax statements for both parcels. In April 2002, Lois Pick contacted CLT and, for the first time, said she had intended to convey only the 19.68 acre parcel. In August, CLT wrote to WM stating that, although the abstract was on the entire property, Lois Pick did not intend to sell the 1.32 acre parcel, and asking WM to release the mortgage on that parcel.

WM responded by writing directly to Jarod Pick in September 2002. The letter explained that ten steps, including submission of a plat map prepared by a licensed surveyor and payment of a \$300 processing fee and a \$400 appraisal report fee, had to be completed in order to request a partial release of the mortgage and that the request would be considered abandoned if WM did not receive a reply in 60 days. Neither Lois Pick nor Jarod Pick responded to WM's letter.

Jarod Pick fell behind on payments and, in 2004, WM instituted foreclosure proceedings on the property. He did not redeem the property; it was redeemed by CB for \$286,929.69 and later sold for \$432,000. In December 2004, Lois Pick wrote a letter "[t]o whom it may concern" saying that she had not pursued the matter after discovering in 2002 that Jarod Pick's name was on the title for both parcels "since [he] was planning to buy the second lot."

In 2007, appellants brought this action alleging breach of contract against CLT, WM, and CB, negligence against CLT, conversion against CB, and unjust enrichment against WM and CB. WM, CB, and CLT moved successfully for summary judgment on all appellants' claims. Appellants challenge those judgments.

DECISION

Appellants argue that genuine issues of material fact preclude the summary judgment. This court "review[s] de novo whether a genuine issue of material fact exists." *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 77 (Minn. 2002). The non-moving party "may not establish genuine issues of material fact by relying upon unverified and conclusory allegations, or postulated evidence that might be developed at

trial, or metaphysical doubt about the facts.” *Dyrdal v. Golden Nuggets, Inc.*, 689 N.W.2d 779, 783 (Minn. 2004).

I. Breach of contract claim

“A claim of breach of contract requires proof of three elements: (1) the formation of a contract, (2) the performance of conditions precedent by the plaintiff, and (3) the breach of the contract by the defendant.” *Thomas B. Olson & Assocs., P.A. v. Leffer, Jay & Polglaze, P.A.*, 756 N.W.2d 907, 918 (Minn. App. 2008), *review denied* (Minn. Jan. 20, 2009).

Appellants argue that, if Lois Pick intended to sell only one parcel of land, CLT and WM breached their contracts with Jarod Pick “by failing to convey or take a mortgage on only one parcel.” But the issue is not what appellants now say they intended: the issue is whether, and when, they indicated that intent to respondents. Eight documents obtained prior to the closing or involved in the closing indicated that both parcels were being transferred: (1) the original unified legal description used when Lois Pick acquired the property, (2) the abstract, (3) the title report, (4) the appraisal report, (5) the warranty deed, (6) the HUD settlement statement, (7) the certificate of real estate value, and (8) the certificate of sanitary system compliance.

Appellants claim that they instructed CLT that only the larger parcel was to be sold, but their deposition testimony contradicts this claim. When Lois Pick was asked if she had ever told CLT that the transaction was to involve only one piece of property, she replied, “That was totally understood beforehand.” When asked if she had any conversations on the subject, she said, “Personally, no.” When asked how she knew that

it was understood beforehand, she said that “[Jarod Pick] discussed that with them.” When asked about separate descriptions for each piece of property that she alleged were given to Jarod Pick, she said that she did not send copies of those descriptions to either WM or to CLT. But Jarod Pick testified, “I don’t recall that conversation” when asked if he ever had a conversation with CLT indicating that he was purchasing only one piece of property.

Appellants rely on two documents: Jarod Pick’s uniform residential loan application, which gave the street address and listed only PID number 217000123202, and the appraisal, which included the unified legal description but gave the property size of only the larger parcel. But there is no evidence that the loan application was provided to any of the respondents (WM was not the first mortgagee from whom Jarod Pick sought financing), and, although the appraisal gave the size of only the larger parcel, it was based on the unified legal description, provided by appellants, that undisputedly covered both parcels.¹

Given the documentary evidence that both parcels of land were sold and the absence of other evidence indicating that respondents should have known the sale and the subsequent mortgage involved only one parcel, there is no basis for appellants’ breach of contract claim.

II. Negligence claim

“The basic elements necessary to maintain a claim for negligence are (1) duty; (2) breach of that duty; (3) that the breach of duty be the proximate cause of plaintiff’s

¹ Appellants also rely on a plat drawing, but what this shows is not clear.

injury; and (4) that plaintiff did in fact suffer injury.” *Schmanski v. Church of St. Casimir of Wells*, 243 Minn. 289, 292, 67 N.W.2d 644, 646 (1954).

Appellants argue that CLT had a duty to draft the documents in accord with appellants’ instructions. But appellants provide no evidence that they instructed CLT to prepare documents pertaining to only one parcel of land, and the undisputed evidence shows that appellants provided the unified legal description of both parcels to CLT to prepare for the closing. A CLT representative testified during her deposition that she had telephoned Jarod Pick and told him an abstract was needed before they could proceed, that he said he would bring the abstract to CLT, and that, after a second phone call, he did so. Appellants provide no evidence indicating that CLT was negligent in relying on the abstract appellants provided.

III. Conversion

To prove a claim of conversion, the plaintiff must show that he holds a property interest in goods and that the defendant wrongfully deprived him of that interest. *Lassen v. First Bank Eden Prairie*, 514 N.W.2d 831, 838 (Minn. App. 1994), *review denied* (Minn. June 29, 1994). A claim of conversion requires a showing of “the exercise of dominion and control” over property “inconsistent with, and in repudiation of, the owner’s rights in those goods.” *Rudnitski v. Seely*, 452 N.W.2d 664, 668 (Minn. 1990).

Appellants argue that “[w]hen [respondents] learned that there were two parcels they had a duty to convey back to [Lois Pick] the property that was not involved in the transaction.” But, as the district court observed, “[Lois Pick’s] expressed intentions at the time of the transaction make her unexpressed intentions not dispositive of this dispute.

There is simply no support for the proposition that [respondents] acted wrongfully at the time of the transaction nor that they had some duty to undo the transaction that [Lois Pick] had signed off on.” Conveying only one parcel of property to Jarod Pick would have been undoing the transaction in which all parties had participated and to which they all agreed. Even if true, the information that Lois Pick had not intended to sell both parcels to Jarod Pick despite signing several documents indicating that both parcels were being sold did not confer on respondents a duty to undo that sale.

IV. Unjust enrichment

Unjust enrichment requires that: (1) a benefit be conferred by the plaintiff on the defendant; (2) the defendant accept the benefit; and (3) the defendant retain the benefit even though retaining it without payment is inequitable. *Acton Constr. Co. v. State*, 383 N.W.2d 416, 417 (Minn. App. 1986), *review denied* (Minn. May 22, 1986).

Appellants assert both that CB “was unjustly enriched at the expense of the [a]ppellants by approximately \$136,000” and that CB “was unjustly enriched by approximately \$100,000.”² Appellants argue that CB was “not a bona fide purchaser of the property” because it “knew that [Lois Pick] had a claim to the property.” But, when CB redeemed the property on foreclosure, neither Jarod Pick nor Lois Pick had taken any steps to redeem it or to have the mortgage released from the parcel Lois Pick claimed. There is no claim for unjust enrichment.

² They do not explain the variance.

Appellants' claims against all respondents were properly dismissed. We affirm the summary judgment.

Affirmed.