STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1471

In re: the Estate of Sherwood Thomas Perl, Deceased.

Filed May 7, 2018
Affirmed
Klaphake, Judge[*]

Hennepin County District Court
File No. 27-PA-PR-09-590

Morgan W. Kavanaugh, Wilkerson & Hegna, PLLP, Edina, Minnesota (for appellant Property Advisors Realty, LLC)

William H. Henney, Minnetonka, Minnesota (for respondent Charles Perl)

Considered and decided by Worke, Presiding Judge; Johnson, Judge; and Klaphake, Judge.

UNPUBLISHED OPINION

KLAPHAKE, Judge

Appellant real-estate listing agent challenges the district court's summary judgment in favor of respondent seller (the estate) on appellant's commission claim against the estate. Appellant argues that the district court misinterpreted the agreements. We affirm.

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

D E C I S I O N

We review the district court's summary-judgment decision de novo to determine whether any genuine issue of material fact exists and whether the district court correctly applied the law. *Citizens State Bank Norwood Young Am. v. Brown*, 849 N.W.2d 55, 61 (Minn. 2014). Summary judgment is appropriate when the evidence, viewed in the light most favorable to the nonmoving party, establishes that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03.

Generally, a real estate broker earns a commission under a listing agreement by producing a purchaser "ready, willing, and able to purchase at the price and on the terms fixed by the seller." *Olson v. Penkert*, 252 Minn. 334, 342, 90 N.W.2d 193, 200 (1958). A listing agreement is a contract. *See Rosenberg v. Heritage Renovations, LLC*, 685 N.W.2d 320, 324 (Minn. 2004).

"Absent ambiguity, the interpretation of a contract is a question of law." *Roemhildt v. Kristall Dev., Inc.*, 798 N.W.2d 371, 373 (Minn. App. 2011), *review denied* (Minn. July 19, 2011). "Whether language in a contract is plain or ambiguous is a question of law that we review de novo." *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). When the language of a contract is clear and unambiguous, this court enforces the agreement of the parties as expressed in the contract. *Dykes v. Sukup Mfg. Co.*, 781 N.W.2d 578, 582 (Minn. 2010). "[A contract] is ambiguous only if its language is susceptible to more than one reasonable interpretation." *Sayer v. Minnesota Dep't of Transp.*, 790 N.W.2d 151, 157 (Minn. 2010).

When Sherwood Thomas Perl died, he owned a seven-acre parcel of property on which he and his son, Gregg Perl, had operated a landscaping business. Respondent Charles Perl was appointed personal representative of Sherwood Perl's estate. The estate entered into a listing agreement with appellant Property Advisors Realty, LLC, to sell the property. The listing agreement was effective from February 21, 2016, through April 21, 2016.

The listing agreement listed the property at $2,150,000, with a five percent sales commission to Property Advisors. The standard form part of the agreement contains the following provision: "[I]f before this Contract expires [Property Advisors] presents a buyer who is willing and able to buy the Property at the price and terms required in this Contract but [the estate] refuses to sell, Seller shall still pay [Property Advisors] the same compensation." But the parties added a provision stating that the estate "may sell to Gregg Perl with no commission paid to Property Advisors Realty. Gregg Perl shall have 45 days from list date to secure financing."

In late February and early March, Property Advisors received two offers to buy the property. On March 22, 2016, Gregg Perl made an offer to purchase the property for the list price, and the sale to him closed on October 18, 2016. Property Advisors' written statement of claim for a $107,500 commission was disallowed, and Property Advisors filed a petition for allowance of the claim.

Property Advisors argues that the Gregg Perl clause only bars Property Advisors from earning a commission on sales to Gregg Perl, but does not apply to commissions earned before Gregg Perl offered to buy the property. Property Advisors argues that, because it received offers to buy the property before Gregg Perl made his offer, it is entitled to its commission. We disagree. The added provision expressly allows the estate to sell the property to Gregg Perl "with no commission paid" to Property Advisors. The phrase "with no commission paid" is not limited or qualified to apply only to a commission on a sale to Gregg Perl. By its plain language, the phrase means that Property Advisors will be paid "no commission" if the property is sold to Gregg Perl. Also, because the five percent commission clause is part of the standard form contract and the Gregg Perl clause is an added term, it supersedes the commission clause. *See Osgood v. Medical, Inc.*, 415 N.W.2d 896, 901 (Minn. App. 1987) ("Where a term is later added to a printed contract and the term conflicts with the printed form, the later term controls."), *review denied* (Minn. Feb. 12, 1988).

It is undisputed that Gregg Perl had financing available by a contract for deed within the 45-day period, and his use of an alternative method of financing was not prohibited under the contract.

Because Gregg Perl secured financing within 45 days of the listing agreement and the property was sold to him, the district court properly granted summary judgment for the estate.

Affirmed.