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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1330**

In re the Estate of: Roger D. Lewis, Deceased.

**Filed April 24, 2023
Reversed
Ross, Judge**

Clay County District Court
File No. 14-PR-21-1365

Dan D. Plambeck, Stefanson Plambeck & Foss, PLLP, Moorhead, Minnesota (for appellant Evan Lewis)

Mary N. Kaasa, 29th & Law, PC, Fergus Falls, Minnesota (for respondent Donald Lewandowski)

Considered and decided by Ross, Presiding Judge; Gaïtas, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

Before he died, Roger Lewis and three others owned land together in Otter Tail County. Upon Lewis's death, one of the other owners, Donald Lewandowski, claimed that a written agreement among all the owners granted him the right to purchase Lewis's share. When the personal representative of Lewis's estate refused to sell Lewandowski the land, Lewandowski filed a creditor's claim against the estate. The personal representative denied Lewandowski's late-filed claim, but the district court granted Lewandowski's petition to

allow his claim. Because we hold that the provision of the agreement on which Lewandowski bases his claim is too vague to be enforceable against the estate, we reverse.

FACTS

Respondent Donald Lewandowski and three brothers—Roger Lewis, Keith Lewis, and Bruce Lewis—purchased an 80-acre tract of land through a contract for deed in October 1989. The foursome later obtained a warranty deed for the property, recorded in December 1992. They entered into a written and notarized agreement concerning the land in October 1990. That agreement, presented here in its entirety, is at the center of this dispute:

Re: Woodland owned by the undersigned, located in Dunn Township, Otter Tail County, Minnesota

If any person wants to sell his share of the land, it must be sold to the other owners at the purchase price of \$200.00 per acre. In the event of the death of any owner, the remaining owners will purchase the deceased owner's share of the property at the purchase price of \$200.00 per acre.

The agreement was never recorded in the land records.

Lewandowski is the sole survivor of the four original owners, and the present ownership is unclear from the record on appeal. The land appears to have been partially conveyed twice after the men signed their agreement. First, Bruce sold his quarter interest to Roger in 2002 for \$4,000. As a result, Roger owned a fifty-percent interest in the land at the time he died. Second, Keith died in 2009, and although none of the other owners purchased his land, the record suggests that Keith's mother was his sole heir and that no creditor claims were filed against his estate. The record also suggests that Lewandowski

attempted to purchase Keith's share from Roger's son, Evan Lewis, implying that Evan may, by descent, presently own what had been Keith's share.

Roger died in March 2020. A year later, Lewandowski notified Evan of his intent to exercise what he characterized as his option to purchase Roger's portion of the shared land by virtue of the 1990 written agreement. Evan petitioned the district court to appoint him as personal representative of Roger's estate. The district court granted his petition, and the period for filing claims against the estate was open from April 27 until August 27, 2021. Lewandowski contacted Evan again on July 29, 2021, offering to purchase what had been Roger's share. Evan did not respond to the letter. Twelve days after the claim period, on September 8, 2021, Lewandowski filed a written statement of claim for \$78,000 against the estate based on his alleged right to purchase the property. Evan disallowed the late claim, and Lewandowski petitioned the district court in challenge. The district court granted Lewandowski's petition after a hearing, allowing the claim against the estate. It ordered Evan to convey Roger's interest in the land to Lewandowski upon Lewandowski's payment of \$8,000.

Evan appeals on behalf of the estate.

DECISION

On appeal, Evan Lewis argues that the district court erroneously allowed Lewandowski's claim with no explanation or excuse as to its lateness, and he contends that the claim is invalid and unenforceable against the estate. Because we agree that Lewandowski's claim is based on an improperly vague agreement, we need not address the late-filing issue.

Evan challenges the district court's order allowing Lewandowski's claim, arguing that the writing between the four men is not a valid and enforceable contract. The existence and terms of a contract are questions of fact, and we may overturn the district court's findings as to the contract terms if the findings are manifestly contrary to the evidence. *Morrisette v. Harrison Int'l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992). On review, we analyze the contract language to determine the parties' intent, and we enforce the agreement when the language is clear and unambiguous. *Storms, Inc. v. Mathy Constr. Co.*, 883 N.W.2d 772, 776 (Minn. 2016). The district court here found that the writing is a "valid and enforceable option contract" and that the parties had previously acted in accordance with the writing when Bruce sold his interest in the property to Roger in 2002. It also concluded that the parties' inaction when Keith died in 2009 has no bearing on the agreement's enforceability. We believe that these are incorrect conclusions.

The district court mistakenly concluded that the writing is an option contract. Although Evan does not explicitly challenge the district court's conclusion that the contract was an option contract he questions the characterization, and we construe his argument as challenging the agreement's interpretation as a whole. An option contract binds an offeror to perform some specific act, leaving it to the discretion of the offeree whether and when to accept the terms and form an agreement. *Johnson v. Fitzke*, 48 N.W.2d 37, 39 (Minn. 1951). And an option agreement must have consideration, separate from the obligation to pay for the land, to become binding. *See Morrison v. Johnson*, 181 N.W. 945, 946 (Minn. 1921). The sparse writing between the four men does not resemble an option contract. The language directs a particular outcome rather than declare that the owners have the option

to purchase the others' interests. It says that, if an owner wishes to sell his share, "it must be sold to the other owners." This provision does not apply here in any event because Lewandowski does not base his claimed right to purchase on Roger's or Roger's estate's wish to sell. The only potentially applicable provision here is the statement, "In the event of the death of any owner, the remaining owners will purchase the deceased owner's share." This statement purports to require "the remaining owners" to purchase, but it does not expressly obligate the decedent's estate to sell. The imprecise language does not speak to the circumstance we face, which is a willing purchaser in a surviving owner and an unwilling seller in the decedent's estate. There are also other, more fundamental problems with the agreement, such as its failure to indicate any consideration. We hold that the district court clearly erred when it found that the writing is an option contract.

We also do not accept the premise that the owners have been acting on the agreement as construed by Lewandowski. Contrary to the notion that any owner wishing to sell his share "must" sell "to the other *owners*," when Bruce wished to sell in 2002, he sold his interest to only one *owner*, Roger. And contrary to the notion that "the remaining owners" must purchase a deceased owner's share, Keith's 2009 death did not result in the remaining owners together, or any of them alone, purchasing Keith's interest. The district court reasoned that the purchase-on-death omission is irrelevant to evaluating the parties' conduct because it might represent merely a delay in the owners' exercising their purported purchase rights. The reasoning implies that Lewandowski, the only surviving owner, has the perpetual right to wrest Keith's interest from Keith's heirs. Lewandowski does not attempt to defend this facially doubtful premise with any statutory or caselaw support. A

contract is void and unenforceable if its vagueness, indefiniteness, and uncertainty renders the intent of its parties unclear. *King v. Dalton Motors, Inc.*, 109 N.W.2d 51, 52 (Minn. 1961). The text of the agreement lacks the clarity necessary to obligate Roger's estate to sell Roger's share to Lewandowski. And Roger, Bruce, and Lewandowski's failure to purchase Keith's share after Keith's death demonstrates that the parties did not treat the agreement as meaning what Lewandowski asserts it means. The writing is too imprecise to constitute an enforceable agreement authorizing Lewandowski to force Roger's heirs to relinquish their ownership interest.

In sum, the disputed term of the unrecorded agreement is unenforceable: "In the event of the death of any owner, the remaining owners will purchase the deceased owner's share of the property at the purchase price of \$200.00 per acre." How long is the provision effective after an owner dies? Who is bound to dispose of the property? Although the provision appears to require all survivors to purchase a deceased owner's share, is it effective when the heirs do not wish to sell? The agreement's meaning cannot be ascertained. The provision is therefore too vague to bind Roger's estate, through personal representative Evan Lewis, to sell the interest that Roger owned to Lewandowski. Lewandowski's claim against the estate should have been disallowed.

Reversed.