

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-1434**

Joey Gunderson,
Appellant,

vs.

Stanley M. Cowan, Jr.,
Respondent,

Amber Marotte, individual,
Respondent,

Shauna Olson, et al.,
Defendants,

Toua Yang, et al.,
Respondents.

**Filed April 7, 2025
Reversed and remanded
Schmidt, Judge**

Kanabec County District Court
File No. 33-CV-23-75

Joel M. Holstad, Forest Lake, Minnesota (for appellant)

Stanley M. Cowan, Jr., Mora, Minnesota (pro se respondent)

Amber Marotte, Ogilvie, Minnesota (pro se respondent)

Timothy J. Nolan, Timothy J. Nolan, PLLC, Minneapolis, Minnesota (for respondents
Toua Yang, et al.)

Considered and decided by Johnson, Presiding Judge; Larkin, Judge; and Schmidt,
Judge.

NONPRECEDENTIAL OPINION

SCHMIDT, Judge

Appellant Joey Gunderson challenges the district court's grant of summary judgment to (1) respondent Stanley M. Cowan, Jr., which dismissed a claim for breach-of-contract; (2) respondent Amber Marotte, which dismissed a claim for tortious interference with contract; and (3) respondents Toua Yang and Hiway Credit Union (Hiway), which dismissed an action to quiet title. Because there are genuine issues of material fact as to whether a contract was formed and whether Gunderson performed under the contract, we reverse the order granting summary judgment and remand the case for further proceedings.

FACTS

The underlying dispute stems from real property formerly owned by Cowan in Kanabec County. Cowan was delinquent on his property taxes and Gunderson's complaint alleges that Cowan had agreed to sell him the property. In support of his allegations, Gunderson produced three handwritten documents detailing interactions between Cowan and Gunderson regarding the property:

- (1) An "Action Log" that Cowan and Gunderson appeared to have signed on June 9, 2018. The Action Log has a handwritten note stating, "I Stanley M Cowan have been in the process of selling the property on Sherwood Road ~~to Joey~~ in Kanabec Co ~~in~~ To Joey gunderson." Below the signatures is another handwritten note stating, "Pd Another \$100.00 Plus T."

- (2) A ledger that reads: “Payment for Land to Stanley” at “2463 Sherwood St[.]”
The ledger describes multiple payments from Gunderson—some by cash, others by check, including one check for taxes—dating from 2018 to 2019.
- (3) A “Bill of Sale” that includes a handwritten note stating, “2463 Sherrwood St[.]” was “[s]old to Joe Gunderson from Stanley Cowan for \$10,000” plus an additional “\$2802.45 (Taxes).” The document also reads, “Paid in FULL” on “11-8-19.” Both Gunderson and Cowan appear to have signed the document.

Besides the handwritten documents, Gunderson also produced three checks that he alleges demonstrates Gunderson’s performance under the contract:

- (1) A check to the Kanabec County Auditor-Treasurer dated July 1, 2018, for \$2,802.45, allegedly demonstrating Gunderson’s payment for delinquent taxes on the property.
- (2) A check to Cowan dated December 12, 2018, in the amount of \$2,000 that Cowan appears to have endorsed.
- (3) A check to Cowan dated April 21, 2018, in the amount of \$500 that Cowan also appears to have endorsed.

The record is unclear about what happened between Gunderson’s alleged payment in full on November 8, 2019, and August 2022. But no one paid taxes on the property during that time, incurring a tax debt of \$2,636.18.¹

¹ The complaint alleges that Gunderson paid the taxes on the property from June 2018 to September 2022. The district court found this allegation was false and ordered Gunderson

Notwithstanding any prior agreement with Gunderson, Cowan entered into a contract to sell the property to Yang on August 27, 2022. Before closing with Yang, Gunderson claims that he and Cowan went to the Kanabec County Recorder's Office. According to Gunderson, the two intended to transfer the property to Gunderson. However, Gunderson alleges that Marotte—Cowan's niece—"interfered" and would not let them record the deed at that time.

Yang closed on the property on September 30, 2022. Unpaid taxes from the years 2019 to 2022 appear as part of the closing settlement statement as a debit against the sale proceeds. Yang financed the purchase with a loan from Hiway secured by a mortgage.

After the sale to Yang, Gunderson recorded an "Affidavit of Purchase of Real Property" with the recorder's office in Kanabec County on October 12, 2022. The affidavit attested that: Gunderson entered into a contract to purchase the property from Cowan on June 9, 2018; that Gunderson substantially performed his obligations under that contract; and that Cowan failed to perform his obligations because he never provided a duly-executed deed.

On October 28, 2022, Yang recorded a deed to the property at the Kanabec County Recorder's Office. Hiway also recorded the mortgage the same day.

to pay the attorney fees of Paul Jackson Enterprises and of Shauna Olson, both of whom Gunderson had sued for aiding and abetting tortious interference with contract. Gunderson's attorney asserts that the misstatement in the complaint was a drafting error. Nonetheless, after the district court dismissed the entire lawsuit and Gunderson filed his notice of appeal, Paul Jackson Enterprises, Olson, and Gunderson filed a stipulation for partial voluntary dismissal with this court under Minn. R. Civ. P. 142.01. We dismissed the portion of this appeal—including any appeal from the order awarding fees—involving claims against Paul Jackson Enterprises and Olson.

Gunderson sued Cowan for breach of contract, sued Marotte for tortious interference with contract, and brought a quiet title action against Yang and Hiway. Marotte moved for summary judgment, arguing that Gunderson did not present evidence of an underlying contract with Cowan. Yang and Hiway also moved for summary judgment, arguing that Gunderson failed to perform under any contract because he did not pay taxes on the property from 2019 to 2022. Cowan did not move for summary judgment.

The district court granted summary judgment to Cowan,² Marotte, and Yang and Hiway. The court determined that the “Action Log” lacked “the essential elements of a valid agreement to purchase real estate” and, therefore, did not constitute a valid contract. The district court also determined that Gunderson did not perform under any contract because he never paid taxes on the property between 2019 and 2022. With no contract, and no performance under a contract, the district court dismissed Gunderson’s lawsuit.

Gunderson appeals.

DECISION

Gunderson argues that the district court erred by granting summary judgment to Cowan, Marotte, and Yang and Hiway. We review a grant summary of judgment de novo. *Hanson v. Dep’t of Nat. Res.*, 972 N.W.2d 362, 371 (Minn. 2022). We will affirm “if no genuine issues of material fact exist and if the court accurately applied the law.” *Id.* at 371-

² The district court characterized its disposal of Gunderson’s claim against Cowan as a dismissal, but the court evaluated the claim as part of its summary judgment analysis. We, therefore, treat the district court’s handling of the claim against Cowan as a sua sponte grant of summary judgment. *See* Minn. R. Civ. P. 56.06 (enabling court to grant summary judgment to nonmovant “[a]fter giving notice and a reasonable time to respond”).

72. “[W]e view the evidence in the light most favorable to the nonmoving party and resolve all doubts and factual inferences against the moving parties. Fact issues exist when reasonable persons might draw different conclusions from the evidence presented.” *Id.* at 372 (quotations and citation omitted).

All three of Gunderson’s claims require a valid contract: (1) the breach-of-contract claim requires the “formation of a contract” (*Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011)); (2) the tortious-interference-with-contract claim requires “the existence of a contract” (*Bouten v. Richard Miller Homes, Inc.*, 321 N.W.2d 895, 900 (Minn. 1982)); and (3) the quiet title action required Gunderson to have a valid property interest—which he alleges arose from a contract (Minn. Stat. § 507.34 (2024)). Gunderson argues the district court erred in determining that there was no valid contract, and that Gunderson did not perform under any contract.

Contract formation and performance are both questions of fact. *Morrisette v. Harrison Int’l Corp.*, 486 N.W.2d 424, 427 (Minn. 1992) (formation); *H.P. Droher & Sons v. Toushin*, 85 N.W.2d 273, 278-79 (Minn. 1957) (performance). Contract-formation depends on the parties’ objective conduct, not their subjective intent. *Com. Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. 2006). The parties need not “agree on every possible point,” but a district court must be able to ascertain “the fundamental terms of the contract . . . with reasonable certainty.” *Hill v. Okay Constr. Co.*, 252 N.W.2d 107, 114 (Minn. 1977). Contracts selling real property must comply with the statute of frauds. Minn. Stat. § 513.05 (2024); *Greer v. Kooiker*, 253 N.W.2d 133, 138 (Minn. 1977).

Here, viewing the evidence in the light most favorable to Gunderson, the “Bill of Sale” complies with the basic framework for a contract under the statute of frauds. First, the document identifies the parties with “reasonable certainty” as it names both Gunderson and Cowan. *Greer*, 253 N.W.2d at 138. Second, Cowan appears to have subscribed the document in his capacity as seller by signing the document. *See* Minn. Stat. § 513.05. Third, the document “sufficiently described” (*Greer*, 253 N.W.2d at 138) the real property that is the subject of the transaction: “2463 Sherrwood St[.]” Finally, the document described the consideration and “the general terms and conditions of the transaction” (*id.*) as: “\$10,000” “Plus \$2802.45 (Taxes)” in exchange for the property. In the light most favorable to Gunderson, there are genuine issues of material fact that a reasonable person could resolve by finding that the parties formed a contract.

The district court also ruled in the alternative that, even if a contract did exist, Gunderson still had no interest in the property because he failed to perform under the contract. The district court based its determination on its finding that Gunderson had failed to pay taxes on the property from 2019 to 2022. But Gunderson produced evidence at summary judgment to create a fact question regarding performance under a contract, and under terms that might not have required him to pay the taxes from 2019 to 2022. For example, the “Bill of Sale” states that Gunderson paid Cowan \$10,000 for the property and paid the taxes on the property (\$2,802.45). The handwritten note reads that both were “Payed in FULL” as of “11-8-19.” Moreover, his check to the Kanabec County Treasurer reflected payment for the taxes while his two checks to Cowan evidenced partial payment toward the property.

Viewing the “Bill of Sale” and the checks in the light most favorable to Gunderson, we conclude that he produced genuine issues of material fact from which a reasonable person could conclude that he performed under a contract. Specifically, a reasonable person could find that as of November 8, 2019—when Gunderson and Cowan signed the “Bill of Sale”—Gunderson had fully performed under a contract with his payments of \$10,000 for the property plus the \$2,802.45 for the taxes. With those findings, a reasonable person could then find that Cowan breached that contract by failing to provide Gunderson with the deed for the property, and that without a deed, Gunderson had no obligation to pay future taxes on the property for 2019, 2020, 2021, and 2022.³

Because Gunderson produced evidence that, when viewed in the light most favorable to him as the nonmoving party, create genuine issues of material fact, we conclude that the district court erred by granting summary judgment and by dismissing the case. We, therefore, reverse and remand for proceedings consistent with this opinion.⁴

Reversed and remanded.

³ A fact-finder, of course, could reject the evidence that a valid contract was formed or that Gunderson performed under the contract. But these are genuine issues of material fact that a fact-finder must resolve. *Morrisette*, 486 N.W.2d at 427; *Toushin*, 85 N.W.2d at 278-79.

⁴ On appeal, Gunderson raised additional arguments regarding his tortious-inference-with-contract claim and his quiet-title action. The district court did not address those arguments because it concluded that Gunderson did not form a valid contract or perform under a contract. We refrain from addressing these issues to permit the district court to address them in the first instance. *See Singelman v. St. Francis Med. Ctr.*, 777 N.W.2d 540, 543 (Minn. App. 2010) (stating that appellate courts generally refrain from addressing issues that the district court did not decide).