



12/05/95 MICHAEL CONG PHAM v. EDWARD B. WOLF

1995 | Cited 0 times | Court of Appeals of Minnesota | December 5, 1995

LANSING, Judge

This is a dispute over whether separate writings together created an enforceable contract to convey commercial real estate. The writings evidence sufficient mutual assent on specific items to create a fact issue on the existence and terms of a contract. We reverse the summary judgment and remand for factual determinations.

FACTS

It is undisputed that Michael Pham and Edward Wolf met at Pham's restaurant to discuss Pham's interest in buying commercial real estate owned by Wolf. It is also undisputed that during the meeting they handwrote various terms on sheets of paper. Wolf wrote on both sides of one sheet of paper, and Pham wrote on one side of another sheet. Wolf wrote:

I have received \$100/\$4,900.00 [earnest] money for the property located at 2524 Nicollet on January 24, 1994 with a balance of \$65,000.00 on the sign of contract for deed. Additional amount of \$190,000.00 8% 17 yrs with payments of \$1,692/mo. + taxes.

This section is followed by Wolf's signature. Under his signature he wrote: "contract to begin on 2 1, 1994". This is followed by two signature lines designated "buyer" and "seller." Wolf signed and dated the "seller" line. Pham did not sign the "buyer" line. On the reverse side of the paper, Wolf sketched a simple map of the property, indicating dimensions and square footage.

On a separate sheet of paper, Pham wrote:

Seller must have:

1- Abstract paper on closing day.

2- The three lease papers

a- up stair 900.00 35% ulit

b- sotto 950.00 1000 1100 1200 7 yrs. 25% ulit



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c- District 202 1300 1400 1500 1600 40% ulit

3- The Air conditioning belong to the building [and] the heater (p

4- From 2/94 the spending is belong to the seller.

5- The rent of the 2/94 is belong to the buyer.

6- The spending for the closing or any spending for paper is

belong to the seller.

At the bottom of this sheet, Pham signed and dated it as "buyer," and Wolf signed and dated as "seller." Pham gave Wolf a personal check for \$100. Wolf and Pham agreed to meet again the next day with their attorneys present.

The next day Wolf came to the meeting with a signed standard purchase agreement containing financing and "As Is" addenda prepared by his attorney. Pham also brought a standard purchase agreement prepared by his attorney. These purchase agreements addressed terms that were not covered in the previous day's writings. The purchase agreements provided for conveyance by a limited warranty deed, apportionment of taxes and special assessments, consents, a due-on-sale clause, a limited hazardous-substances warranty, and a prohibition on improvements.

The meeting ended when Pham refused to assent to some terms in Wolf's purchase agreement. Wolf told Pham that he was withdrawing his offer and left. Wolf later returned the \$100 Pham gave him.

The next month Pham demanded conveyance of the property; Wolf refused. Pham brought this declaratory judgment action and moved for summary judgment. At the hearing on the motion, Wolf orally moved for summary judgment. The district court denied Pham's motion and entered summary judgment for Wolf.

DECISION

The existence of a contract is primarily a question of fact, determined on the basis of the evidence and the surrounding circumstances. *Malmin v. Grabner*, 282 Minn. 82, 86, 163 N.W.2d 39, 41 (1968); *Knezevich v. Dress*, 399 N.W.2d 219, 220 (Minn. App. 1987). Whether a contract is formed is judged objectively by the conduct of the parties, not by their subjective intentions. *Cederstrand v. Lutheran Bhd.*, 263 Minn. 520, 532, 117 N.W.2d 213, 221 (1962). Evidence of conduct, contemporaneous with the alleged formation of a contract, may show that the parties never intended an agreement to bind them. *Hruska v. Chandler Assocs., Inc.*, 372 N.W.2d 709, 714 (Minn. 1985).



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The parties do not dispute the material facts in this case; they dispute the inferences that may be drawn from those facts. Several facts support inferences that the parties intended to create a binding contract: Wolf signed, as seller, the page Pham wrote; that page contained specific terms for a transfer of identified property; and Pham paid Wolf \$100, allegedly as earnest money.

Other facts support an inference that the parties did not intend their writings to create a binding contract: Pham did not sign the page written by Wolf stating the location of the property, price, and payment structure for the sale; the parties agreed to meet the following day with their attorneys present; and Wolf alleges that he told Pham at the restaurant: "I don't agree to any of this that we are writing down, but I will sign that we at least discussed it."

The facts support competing inferences on whether Pham and Wolf formed a contract with their writings. The evidence of contract formation, although disputed, is sufficient to withstand summary judgment and require a factfinder to consider and weigh the evidence, determine credibility, and draw inferences from the evidence that is credited.

The district court also granted summary judgment because the terms of the alleged agreement were too indefinite, as a matter of law, to be enforced. Courts will not enforce agreements that are so uncertain in their essential terms that the parties cannot enact the agreement without additional agreements. *Hartung v. Billmeier*, 243 Minn. 148, 151, 66 N.W.2d 784, 788 (1954). But the law does not favor the destruction of contracts because of indefiniteness. *King v. Dalton Motors, Inc.*, 260 Minn. 124, 126, 109 N.W.2d 51, 53 (1961). An agreement should be upheld when, despite some incompleteness, a court can reasonably find the parties' intent by applying the parties' words as the parties must have understood them. *Furuseth v. Olson*, 297 Minn. 491, 492-93, 210 N.W.2d 47, 49 (1973).

Pham's and Wolf's writings specify the parties, location of the property, price, form of payment, payment schedule, form of conveyance, date of transfer, earnest money, assignment of rent revenues, assignment of closing costs, and a list of documents the seller must produce at closing. The district court noted that the writings did not address responsibility for taxes, attorneys' fees, or consignment and prohibition clauses. Minnesota courts have regularly upheld real estate conveyances that specify the parties, property, price, and time of transfer. E.g., *Staples v. Miller*, 319 N.W.2d 57, 59-60 (Minn. 1982); *Doyle v. Wohlrabe*, 243 Minn. 107, 111, 66 N.W.2d 757, 761 (1954); *LaPanta v. Heidelberger*, 392 N.W.2d 254, 258 (Minn. App. 1986). The parties' fundamental intent may be ascertained despite some missing terms.

The existence and terms of a contract, when those terms are in doubt, are questions of fact. *McEwen v. State Farm Mut. Ins.*, 281 N.W.2d 843, 845-46 (Minn. 1979). Because the existence and terms of the agreement are in doubt, and their determination depends on the parties' conduct, summary judgment is inappropriate.



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Reversed and remanded.

Harriet Lansing

November 28, 1995.

