

STATE OF MICHIGAN
COURT OF APPEALS

ST. NICHOLAS GREEK ORTHODOX CHURCH
OF DETROIT,

UNPUBLISHED
June 9, 2005

Plaintiff-Appellee,

v

RICHARD PERNAL,

No. 252968
Oakland Circuit Court
LC No. 2003-050555-CZ

Defendant-Appellant.

Before: Neff, P.J., and Owens and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting plaintiff's motion for summary disposition and judgment quieting title to real property in favor of plaintiff. We reverse.

Defendant, the owner of real property, sent a letter to plaintiff indicating that a parcel of real property adjacent to plaintiff's property was offered for sale. The letter provided that the property was offered for "\$825,000 cash/mortgage, 'as is', with no conditions, no contingencies related to zoning and 120 days post closing occupancy for the present tenants." This offer dated June 3, 2003, expressly provided that it would remain open for a two-week period.

On June 4, 2003, plaintiff sent a letter indicating that it accepted the "terms of the offer" set forth in the letter. However, the letter also referenced an attached purchase agreement. Although the purchase agreement contained the signature of plaintiff's president, defendant did not sign the agreement.

The offer by letter dated June 3, 2003, did not reference other potential purchasers. However, the offer sheet was also directed to White Chapel Memorial Association Park Perpetual Care Trust ("White Chapel"). On June 10, 2003, White Chapel, by letter, offered to pay \$900,000 cash for the premises, with no conditions or contingencies related to zoning and 180 days post closing occupancy rent free. On that same date, defendant sent a letter to both potential purchasers. This letter indicated that "amended offers" had been received. The letter further provided that the offer would remain open for two weeks' time as provided in the initial offering letter.

On June 13, 2003, plaintiff sent a letter to defendant, indicating that the offer had been accepted on June 4, 2003, and an enforceable contract was formed. Consequently, plaintiff sought to proceed to close the real estate transaction. On June 17, 2003, plaintiff filed suit seeking specific performance, and the trial court granted plaintiff's motion for summary disposition.

Defendant alleges that the trial court erred in granting plaintiff's motion for summary disposition. We agree. We review summary disposition decisions de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). The moving party has the initial burden to support its claim to summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate a genuine issue of disputed fact exists for trial. *Id.* To meet this burden, the nonmoving party must present documentary evidence establishing the existence of a material fact, and the motion is properly granted if this burden is not satisfied. *Id.* Affidavits, depositions, and documentary evidence offered in support of and in opposition to a dispositive motion shall be considered only to the extent that the content or substance would be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

The construction and interpretation of a contract presents a question of law that is reviewed de novo. *Bandit Industries, Inc v Hobbs Int'l Inc (After Remand)*, 463 Mich 504, 511; 620 NW2d 531 (2001). The goal of contract construction is to determine and enforce the parties' intent based on the plain language of the contract itself. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000). If the contract language is clear and unambiguous, its meaning presents a question of law for the court. *UAW-GM Human Resource Center v KSL Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998).

A valid contract requires mutual assent on all essential terms. *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992). Mere discussions and negotiation cannot be a substitute for the formal requirements of a contract. *Id.* at 549. Before a contract can be completed, there must be an offer and acceptance. *Pakideh v Franklin Commercial Mortgage Group, Inc*, 213 Mich App 636, 640; 540 NW2d 777 (1995). An offer is defined as "the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Restatement Contracts, 2d, § 24; see also *Cheydleur v Hills*, 415 F Supp 451, 453 (ED Mich, 1976). Acceptance must be unambiguous and in strict conformance with the offer. *Pakideah, supra* at 640. Finally, a contract for the sale of land must also satisfy the statute of frauds. MCL 566.108; MSA 26.908; *Jaques v Smith*, 62 Mich App 719, 720; 233 NW2d 839 (1975). To satisfy the statute of frauds, there must be a writing signed by either (1) the party making the sale or (2) a person lawfully authorized in writing to act on behalf of the person making the sale. *Jaques, supra* at 720. [*Eerdmans v Maki*, 226 Mich App 360, 364-365; 573 NW2d 329 (1997).]

To determine whether a contract arose from the parties' meeting of the minds or whether there was simply an offer by a party and a counter offer by another party, the language of the offer and acceptance must be examined:

It is elementary that in order to give rise to a valid contract the acceptance must in every respect correspond substantially with the identical offer made. The acceptance must be absolute and unconditional, and if conditions are attached or if it differs from the offer, the transaction amounts only to a proposal and a counter-proposal. [*Marshall Manufacturing Co v Berrien County Package Co*, 269 Mich 337, 339; 257 NW 714 (1934).]

“A proposal to accept an offer which contains terms varying from that of the offer is a rejection of the offer.” *Wayne State University v Building Systems Housing Corp*, 62 Mich App 77, 85, 233 NW2d 195 (1975). Where an offeree’s acceptance is conditioned upon the sale and delivery of financing bonds, this action constituted a counter proposal and was thus a rejection of the original offer. *Id.* at 85-86. A binding real estate contract will be established from a counteroffer if the original offerer accepts the counteroffer before it lapses or is revoked. *Kashat v Prangs*, 16 Mich App 76, 77-79; 167 NW2d 603 (1969).

The original offer submitted by defendant merely provided that the subject property was offered for sale for “\$825,000 cash/mortgage, ‘as is’, with no conditions, no contingencies related to zoning and 120 days post closing occupancy for the present tenants.” Moreover, the offer was to remain open for a two week period. The purchase agreement did comport with the purchase price and the closing occupancy period. However, the purchase agreement, contrary to the offer imposing “no conditions,” contained additional terms and conditions. The purchase agreement was contingent upon financing and approval by uniform parish regulations and further provided that the seller would assume costs. Additionally, defendant, as the seller, did not sign this purchase agreement within the two week offer period. Consequently, the trial court erred¹ in granting plaintiff’s motion for summary disposition where the purchase agreement was merely a counteroffer and not an outright acceptance of the offer.² *Marshall, supra; Kashat, supra.*

¹ At the hearing regarding summary disposition, the trial court inquired of plaintiff’s counsel whether the purchase agreement was in accordance with the terms of the offering letter, and counsel responded affirmatively. There is no indication in the record that an independent examination of the terms of the offer, plaintiff’s response, the purchase agreement, the offer by White Chapel, and the letter by defendant characterizing the responses as “amended offers” occurred.

² We note that plaintiff provided an affidavit from counsel involved in the negotiation for the purchase of the subject property. This affidavit provides additional details regarding the negotiations and alleges that there was an oral “congratulations” regarding the purchase of the property from defendant’s counsel. Plaintiff alleges that, based on this uncontroverted affidavit, summary disposition in its favor was proper. However, as previously noted, contract construction presents a question of law for the court. *Bandit, supra*. Furthermore, the duty to interpret and apply the law is allocated to the courts, not the parties’ witnesses. See *Hottmann v Hottmann*, 226 Mich App 171, 179; 572 NW2d 259 (1997). We also note that the real estate purchase agreement was not signed by the seller contrary to the statute of frauds. See *Eerdmans, supra* at 365; MCL 566.108.

Reversed.

/s/ Janet T. Neff

/s/ Donald S. Owens

/s/ Karen M. Fort Hood