

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Darwin Savre, d/b/a Savre's Heavy
Truck & Auto Repair,

Plaintiff/Appellee,

vs.

Jose Santoyo,

Defendant/Appellant.

)
)
) Supreme Court No. 20140358

) District Court No. 09-2013-CV-02802
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)

Appeal from the Findings of Fact, Conclusions of Law and Order for Judgment
entered on August 20, 2014, and the Judgment entered on September 9, 2014,
County of Cass, East Central Judicial District
Honorable Norman G. Anderson, Presiding

APPELLANT'S REPLY BRIEF

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INTRODUCTION

[¶1] The main issue before the Court is whether a party can be held liable for breaching a contract by not selling his property to a third party. Under the Option Agreement, Darwin Savre’s attempt to exercise the option on behalf of a third party, JDDS, LLC, was null and void. Consequently, Jose Santoyo did not breach the contract when he refused to sell his property to the LLC.

I. Standard of Review

[¶2] Savre first argues a clearly erroneous standard of review governs. Santoyo agrees this standard applies to the district court’s factual findings, but he also challenges the court’s construction of the Option Agreement. “[C]onstruction of a written contract to determine its legal effect presents a question of law, which is fully reviewable.” Brash v. Gulleeson, 2013 ND 156, ¶ 15, 835 N.W.2d 798. “On appeal this Court independently examines and construes a contract to determine if the district court erred in its interpretation.” Abelmann v. Smartlease USA, L.L.C., 2014 ND 227, ¶ 13, 856 N.W.2d 747. Moreover, while Savre incorrectly claims trial was held because of an ambiguity in the contract, even if that were true, “[w]hether a contract is ambiguous presents a question of law.” Brash, 2013 ND 156, ¶ 15. Thus, Santoyo’s challenges to the district court’s construction of the Option Agreement are fully reviewable.

II. Santoyo did not breach the Option Agreement by not selling his property to a third party

A. There was never a valid attempt to exercise the option

[¶3] Savre attempts to minimize the involvement of JDDS, LLC, as he claims he was simply using the LLC to “finance” his purchase of the property. This is a newly-raised argument that contradicts Savre’s position below.

[¶4] For instance, Savre was asked in discovery: “State whether you or a third-party tried to exercise the option to purchase the property on behalf of a third party?” Doc. #31. Savre responded, “Yes, Darwin and James Danielson tried to exercise the option to purchase on the Property. James and Darwin formed JDDS, LLC and obtained financing for the purchase” Id. Savre also filed an affidavit where he stated he and James Danielson, *i.e.*, JDDS, LLC, “planned to purchase the building together[.]” Doc. #35.

[¶5] At trial, Savre testified he and Danielson “thought it would be a good idea if we went in together on the property.” Trial Tr. 36:20-22. Savre confirmed on multiple occasions JDDS, LLC would be “purchasing” the property. Id. at 37:11-14; 38:15-18; 39:14-18; 116:7-9. Savre further solidified this distinction as follows:

Q. “Was your plan to purchase Mr. Santoyo’s building personally or together with Mr. Danielson?

A. It would have been together with Mr. Danielson.

Id. at 116:16-19.

[¶6] Most importantly, the district court’s findings contradict Savre’s newfound claim that JDDS, LLC was merely helping him finance his individual purchase of the property. The court found JDDS, LLC was formed “for the purpose of *purchasing* the property,” and Savre’s “intent [was] *to exercise the purchase option under this new company*[.]” APP. 63 (emphasis added).

[¶7] Santoyo agrees with the above factual findings, but challenges the court’s contract interpretation as a matter of law. The district court erroneously framed the issue as whether Savre “voided the purchase option agreement” by involving JDDS, LLC. Id. According to the court, Savre’s intent to purchase the

property through JDDS, LLC, was “not a valid reason to terminate the purchase option agreement.” Id.

[¶8] Santoyo does not disagree with the district court’s conclusion in this respect, but this does not mean Santoyo breached the contract. Under paragraph 5 of the Option Agreement, any “attempt to assign, convey, delegate, or transfer this option to purchase without [Santoyo’s] express written permission . . . shall be deemed null & void.” APP. 12. Accordingly, when Savre attempted to exercise the option through JDDS, LLC, without Santoyo’s permission, that attempt was null and void under the plain language of paragraph 5.

[¶9] Thus, contrary to the district court’s conclusion, Santoyo is **not** arguing Savre’s attempt to transfer the option terminated the Option Agreement. Instead, Savre’s attempt to have JDDS, LLC exercise the option should be treated as if it never occurred, *i.e.*, it was “null & void.” See Black’s Law Dictionary (9th ed. 2009) (defining “null” as “having no legal effect; without binding force; void <the contract was declared null and void>”). Therefore, the option remained valid at that time, and Savre still could have personally purchased the property by exercising the option that existed solely for his benefit. He never attempted to do so, however, and thus Santoyo had no obligation to sell the property.

[¶10] In sum, there was only one attempt ever made to exercise the option, and that single attempt was “null & void” because it was made by or on behalf of a third party who had no right to exercise the option. Because there was no valid attempt to exercise the option, Santoyo did not breach the contract.

B. The Option Agreement prohibited more than formal assignments

[¶11] Savre further claims he did not attempt to assign his rights because there was no written assignment entered into evidence. However, the exclusivity provision

prohibited Savre from not only assigning the option, but conveying, delegating, or transferring the option without Santoyo's permission. APP. 10. Each of these terms has legal significance and must be given effect. See Kuperus v. Willson, 2006 ND 12, ¶ 11, 709 N.W.2d 726.

[¶12] Second, the lack of a formal written assignment means nothing because the provision speaks in terms of an "attempt" to assign, convey, delegate or transfer the option. It was not necessary for Savre to execute a formal assignment, because any "attempt" to transfer the option was deemed null and void.

C. JDDS, LLC's attempt to purchase the property was a counteroffer that Santoyo was free to reject

[¶13] The district court also violated basic principles of contract law that apply specifically to option agreements. When given an option, "the optionee must perform the terms of the option within the specified time and upon the terms and conditions provided in the agreement." Langer v. Bartholomay, 2008 ND 40, ¶ 21, 745 N.W.2d 649. "An option is a mere offer, and acceptance thereof must be made within the time allowed, and in minute compliance with its terms, or the optionee's rights thereunder will be lost, substantial compliance being insufficient to constitute an acceptance." Id.; see also Prairieview Nursing Home, 1999 ND 142, ¶ 15 ("Under North Dakota law, an optionee must strictly comply with the contractual requirements for exercising an option to purchase.").

[¶14] An option is merely an offer, and in this case Santoyo made that offer solely to Savre. Langer, 2008 ND 40, ¶ 21. A third party, JDDS, LLC, cannot accept an offer that was never made to it. "The exercise of an option, just like acceptance of an offer, must be unconditional." Matrix Props Corp. v. TAG Investments, 2000

ND 88, ¶ 10, 609 N.W.2d 737. “An attempt to exercise an option that deviates from the terms of the option acts as a rejection of the option and counteroffer.” Id.

[¶15] While Savre’s attempt to exercise the option in favor of JDDS, LLC, was null and void, at most, it acted as a rejection of the option and a counteroffer that Santoyo sell the property to JDDS, LLC. Santoyo rejected this counteroffer, as demonstrated by Savre’s testimony that “it became an issue” with Santoyo because Santoyo did not want Danielson involved in the purchase. Trial Tr. 38:6-9. Specifically, Savre testified Santoyo “**didn’t want a third-party involved.**” Id. at 38:14 (emphasis added). Santoyo was not required to accept Savre’s counteroffer, so he did not breach the contract by refusing to sell his property to a third party.

D. Savre was not able to perform under the Option Agreement

[¶16] Savre attempts to divert this Court from applying these basic principles of contract law by focusing on the financing disclaimer, which stated, “[o]btaining financing shall not be held as a condition of performance of this Option to Purchase Agreement.” APP. 10. Savre’s argument confuses two separate issues: obtaining financing, and delegating or transferring the option to a third party, which was prohibited under paragraph 5. The only evidence in the record showed JDDS, LLC was the party who obtained financing. See APP. 27 (“JDDS LLC has been approved for financing with BlackRidgeBANK.”). Not only does this contradict Savre’s claim that he obtained financing, it further supports the district court’s finding that JDDS, LLC was purchasing the property. Thus, the issue is not obtaining financing, it is the involvement of a third party, who had no right to purchase the property.

[¶17] It further bears noting that, even if Savre was merely using JDDS, LLC for financing, this was still improper. The Option Agreement obligated Savre to pay \$370,000 to satisfy the \$550,000 purchase price. APP. 9. Under North Dakota law,

“[t]he burden of an obligation may be transferred with the consent of the party entitled to its benefit, but not otherwise[.]” N.D.C.C. § 9-11-03. Santoyo did not consent to JDDS, LLC’s involvement, and therefore Savre could not transfer his contractual obligation of payment to JDDS, LLC.

III. The district court failed to make sufficient factual findings on Santoyo’s counterclaim

[¶18] Savre contends the district court’s factual findings regarding Santoyo’s counterclaim were sufficient because the evidence was controverted by Savre and Santoyo did not provide enough corroborative evidence. Savre’s arguments are pure speculation, because the findings leave no indication as to the basis of the court’s decision.

[¶19] A recent decision of this Court issued after Santoyo filed his opening brief helps shed more light on this issue. In Abelmann v. Smartlease USA, L.L.C., 2014 ND 227, ¶ 17, 856 N.W.2d 747, the district court failed to make specific findings, as it “conclusorily stated there was no ‘material breach of the lease justifying eviction,’ and the ‘facts show that any non-compliance by Smart Lease has been minor and of non-essential terms.’” The Court “explained that conclusory, general findings do not satisfy the requirements of N.D.R.Civ.P. 52(a), and a district court errs as a matter of law when it does not make required findings to adequately understand the basis of its decision.” Id. at ¶ 18. The Court reversed the district court’s judgment because the factual findings were “inadequate to permit appellate review.” Id. at ¶ 21.

[¶20] The Court should reverse the district court here for the same reasons. The district court’s findings are even less detailed than those in Abelmann, as the court simply stated Santoyo’s testimony was not credible. APP. 64.

[¶21] While Savre argues he disputed Santoyo's evidence, this further supports the need for detailed findings. "Because this Court defers to a district court's choice between two permissible views of the evidence and the district court decides issues of credibility, detailed findings are particularly important when there is conflicting or disputed evidence." Abelmann, 2014 ND 227, ¶ 18. "This Court cannot review a district court's decision when the court does not provide any indication of the evidentiary and theoretical basis for its decision because we are left to speculate what evidence was considered and whether the law was properly applied." Id. Under these circumstances, the Court should reverse the district court on Santoyo's counterclaim.

CONCLUSION

[¶22] The Court should reverse the district court's Judgment on Savre's claim because Santoyo did not breach the Option Agreement by refusing to sell his property to a third party. The Court should further reverse and remand for sufficient factual findings on Santoyo's counterclaim under N.D.R.Civ.P. 52(a).

Dated: January 22, 2015.

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CERTIFICATE OF COMPLIANCE

The undersigned attorney for the Appellant in the above-entitled matter hereby certifies, in compliance with Rule 32(a)(8)(A), N.D.R.App.P., that the above brief contains 1,949 words (excluding words contained in **(1)** the table of contents, **(2)** the table of authorities, and **(3)** this certificate), which is within the limit of 2,000 words.

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Defendant/Appellant.)	
-----)	

STATE OF NORTH DAKOTA)	
)	ss.
COUNTY OF CASS)	

I hereby certify that on January 22, 2015, I caused to be electronically filed the **Appellant's Reply Brief** with the Clerk of the North Dakota Supreme Court (at **supclerkofcourt@ndcourts.gov**) and served the same electronically upon **Ann E. Miller** as follows:

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Dated: January 22, 2015.

/s/ Andrew D. Cook
Andrew D. Cook, ND ID #06278

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CERTIFICATE OF SERVICE

STATE OF NORTH DAKOTA)

COUNTY OF CASS)

) ss.

I hereby certify that on January 26, 2015, I caused to be electronically filed the ***corrected* Appellant's Reply Brief** with the Clerk of the North Dakota Supreme Court (at supclerkofcourt@ndcourts.gov) and served the same electronically upon **Ann E. Miller** as follows:

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Dated: January 26, 2015.

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