COURT OF APPEALS
DECISION
DATED AND FILED

February 9, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-2081-FT

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

KARL A. ANDERSON AND REBECCA A. ANDERSON,

PLAINTIFFS-APPELLANTS,

v.

CARL G. HEDLUND AND PEARL A. HEDLUND,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Burnett County: JAMES H. TAYLOR, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Karl and Rebecca Anderson appeal a summary judgment dismissing their complaint for specific performance of a real estate

purchase contract.[1] They argue that substantial issues of fact preclude the entry of summary judgment. We affirm the judgment.

The Andersons entered into a contract with Carl and Pearl Hedlund to purchase the Hedlunds' property located in Burnett County. The contract provided:

> IT IS FURTHER UNDERSTOOD AND AGREED that the closing of this transaction is contingent upon the above described parcel and Lot 1 of CSM Vol. 1, page 92 passing all environmental tests required by the Purchasers and their bank. In the event said parcel does not pass said environmental tests then this contract is null and void and all earnest money paid shall be returned to the purchasers.

Keith Norlin, an environmental consultant, filed an affidavit in support of the Hedlunds' motion for summary judgment of dismissal. Norlin stated that the comprehensive environmental assessments he conducted showed contamination.

In opposition to the Hedlunds' summary judgment motion, the Andersons filed an affidavit stating:

> [I]t was understood and agreed between the parties that environmental testing and work necessary was to be arranged by defendants. However, defendants frustrated the purposes of the contract by not authorizing Keith Norlin, their environmental consultant, to proceed with the necessary work in any timely fashion.

[1] This is an expedited appeal under RULE 809.17, STATS.

Attached to the Anderson's affidavit was a copy of a handwritten diagram that included the following unsigned note: "We plan to finish the soil testing, and if necessary, the soil clean up in the spring."

The trial court concluded that the parties' contract was unambiguous. As a result, it determined that parol evidence of any other potential agreement must be disregarded. Relying on the plain language of the contract, the trial court determined that:

> It provides simply that the sale of the Property is contingent upon the property passing environmental testing. It does not impose upon the seller the duty to clean up the Property should the Property fail those tests. Although under the facts of this case plaintiffs might be entitled to specific performance of the Earnest Money Contract and conveyance of Property to them *as is*, they do not seek such relief in this action. (Emphasis in the original.)

The Andersons appealed. Upon receipt of the briefs, we observed that the Andersons failed to challenge the court's characterization of the object of their action and that they failed to clarify the ultimate relief they sought, contrary to RULE 809.19(1)(f), STATS. As a result, on January 11, 1999, we issued an order that within five days, the Andersons "must file a supplement to their brief identifying whether they seek specific performance and conveyance of the property '*as is,*' or whether they seek the sellers to clean up the property." This order notwithstanding, the Andersons did not supplement their brief and clarify the precise nature of relief sought.[2] Although this is a sufficient basis upon which to

[2] We further noted that the Andersons' statement of case failed to include record citation contrary to RULE 809.19(1)(d), STATS., struck their statement of case, and ordered them to file within five days a supplemental statement of case. On January 20, 1999, we received from the Andersons only a supplemental statement of the case containing record citation.

dismiss this appeal, *see* RULE 809.83(2), STATS., we nonetheless address the Andersons' contentions.

The Andersons argue that the trial court erroneously concluded that no material issues required trial. *See* § 802.08(2), STATS. They contend that "by failing to authorize their environmentalist to proceed, as set forth in the Anderson affidavit, the Hedlunds breached this [implied] duty of good faith." They further contend that the Hedlunds asked that the Andersons "sweeten the pot."

When reviewing a summary judgment, this court applies the same standards set forth in § 802.08, STATS., as the trial court. ***Griebler v. Doughboy Recreational, Inc.***, 160 Wis.2d 547, 559, 466 N.W.2d 897, 902 (1991). Summary judgment is granted when there is no dispute of material fact and the moving party is entitled to judgment as a matter of law. ***Id.***

The record fails to demonstrate a disputed issue of material fact. The Andersons' argument implies, and the trial court concluded, the Andersons demanded that the sellers clean up the property as part of the transaction. The Andersons have not challenged this conclusion, despite our order that they clarify their argument in this regard. Consequently, we accept the trial court's determination that the Andersons were not seeking specific performance to convey the property "as is." *See* ***Riley v. Town of Hamilton***, 153 Wis.2d 582, 588, 451 N.W.2d 454, 456 (Ct. App. 1989) (appellate courts will consider only those issues specifically raised on appeal).

The Andersons' claim rests upon an interpretation of their contract, which presents a question of law. *See* ***Katze v. Randolph & Scott Mut. Fire Ins. Co.***, 116 Wis.2d 206, 212, 341 N.W.2d 689, 691 (1984). The object of contract construction is to determine the intent of the contracting parties, and we begin with

the plain language used to express their agreement. ***Bank of Barron v. Gieseke***, 169 Wis.2d 437, 455, 485 N.W.2d 426, 432 (Ct. App. 1992). Evidence outside the four corners of the document is not generally admissible to vary its terms:

> When the parties to a contract embody their agreement in writing and intend the writing to be the final expression of their agreement, the terms of the writing may not be varied or contradicted by evidence of any prior written or oral agreement in the absence of fraud, duress or mutual mistake.

Dairyland Equip. Leasing v. Bohen, 94 Wis.2d 600, 607, 288 N.W.2d 852, 855 (1980). The real question when a party invokes the parol evidence rule is whether the parties intended the written agreement to be final and complete or "integrated," or whether they intended any prior agreements to be part of their total agreement. ***Id***.

Because no fraud, duress, mutual mistake or lack of integration is alleged, parol evidence is inapplicable to vary the terms of the unambiguous contract. *See* ***id***. Therefore, the trial court was correct in limiting its analysis to the four corners of the document. It correctly interpreted the contract to unambiguously relieve the seller of any environmental clean up obligation. We agree with the trial court's conclusion: "Although under the facts of this case plaintiffs might be entitled to specific performance of the Earnest Money Contract and conveyance of Property to them *as is*, they do not seek such relief in this action." As a result, the trial court correctly determined that as a matter of law the Hedlunds were entitled to judgment of dismissal.

By the Court.—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.