**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**August 31, 2015**

**Diane M. Fremgen**
**Clerk of Court of Appeals**



**Appeal No. 2014AP2687** **Cir. Ct. No. 2011CV215**

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

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**ONEWEST BANK, FSB,**

**PLAINTIFF-RESPONDENT,**

**V.**

**GENE O. RAATZ AND GLORIA J. RAATZ,**

**DEFENDANTS-APPELLANTS,**

**DISCOVER BANK AND HOWARD YOUNG HEALTH CARE, INC.,**

**DEFENDANTS.**

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APPEAL from a judgment of the circuit court for Vilas County: NEAL A. NIELSEN III, Judge. *Affirmed*.

Before Stark, P.J., Hruz, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Gene and Gloria Raatz appeal a summary judgment of foreclosure entered after the circuit court granted OneWest Bank, FSB's action for reformation of the mortgage to make it apply to both of the lots

owned by the Raatzes. Although the Raatzes raise several confusing arguments challenging the court's decisions and the Bank offers several alternative grounds for affirming the decisions, we conclude resolution of two issues is dispositive. Because the court properly granted reformation of the mortgage and the supporting papers the Raatzes submitted opposing summary judgment failed to create an issue of material fact, we affirm the judgment.

¶2 The Raatzes own lots two and three in the Elmer Ahlborn subdivision. They located their house on lot two, but its septic system and garage are on lot three. The driveway enters from the street on lot two. Both properties have a single address, and the Raatzes asked to be taxed on a single bill for both properties. In bankruptcy schedules filed before the present mortgage was created and in the loan application for the mortgage, the Raatzes listed ownership of only lot two. Before the present mortgage was created in 2006 by FinanSure Home Loans, an appraiser, Robert Baratka, inspected the property and submitted an appraisal for lots two and three and their shared street address. The mortgage, however, mentioned only lot two. That mortgage was ultimately assigned to OneWest Bank.

¶3 Because this case was decided on summary judgment, we employ a de novo standard of review. ***Olson v. Town of Cottage Grove***, 2008 WI 51, ¶34, 309 Wis. 2d 365, 749 N.W.2d 211. Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. ***Schultz v. Industrial Coils, Inc.***, 125 Wis. 2d 520, 521, 373 N.W.2d 74 (Ct. App. 1985). An issue of fact is genuine if a reasonable jury could find for the nonmoving party. ***Central Corp. v. Research Prods. Corp.***, 2004 WI 76 ¶19, 272 Wis. 2d 561, 681 N.W.2d 178.

¶4 The court properly granted the Bank's request to reform the mortgage to reflect the parties' agreement to mortgage both lots two and three. An action for reformation of mortgage sounds in equity. ***Richards v. Land Star Group, Inc.***, 224 Wis. 2d 829, 847, n.8, 593 N.W.2d 103 (Ct. App. 1999). This court reviews decisions in equity for an erroneous exercise of discretion, and will sustain the circuit court's ruling if it examined the relevant facts, applied the proper standard of law, and, using a demonstrated rational process, reached a reasonable conclusion that a reasonable judge could reach. ***Id.*** A court in equity may reform a written instrument to express the parties' true intentions. *See* WIS. STAT. §§ 847.07 and 706.04 (2013-14). The Raatzes' use of the two lots as a single parcel, their sworn statements in their bankruptcy schedules, their representation in the loan application, and reliance by the mortgagee on an appraisal of both lots confirm the circuit court's conclusion that the parties intended the mortgage to be secured by both lots two and three. As the court noted, it would make no sense for a lender to grant a mortgage on a house and driveway while excluding the garage and septic system located at the same street address.

¶5 The Raatzes argue their supporting papers created an issue of material fact based on their alleged instruction to Baratka not to appraise lot three, and imputing that restriction to the Bank. However, their supporting papers do not indicate they told Baratka not to appraise lot three. In his deposition, Gene testified to having a conversation with Baratka, but he did not say he told Baratka not to appraise the garage on Lot 3. Neither his affidavit nor Gloria's provides evidence of that alleged restriction. Gloria's affidavit merely states, "We did not authorize the appraisal of Lot Three as part of the appraisal process." Not specifically authorizing an appraisal of lot three does not constitute evidence that

Baratka was informed that the appraisal applied only to the house located on lot two and not the garage and septic system located on lot three.

*By the Court.*—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2013-14).