

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 18, 2005**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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**Appeal No. 2004AP2940**

**Cir. Ct. No. 2003CV409**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**MICHAEL S. ZELLER AND BARBARA F. ZELLER,**

**PLAINTIFFS-RESPONDENTS,**

**V.**

**DENNIS D. STOCKEL,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Sheboygan County: GARY LANGHOFF, Judge. *Affirmed.*

Before Brown, Nettesheim and Snyder, JJ.

¶1 SNYDER, J. Dennis D. Stockel appeals from a judgment awarding Michael S. Zeller and Barbara F. Zeller specific performance on a contract for the

sale of real property. The Zellers sued Stockel seeking to enforce a real estate transaction involving three parcels of land, two of which have yet to be conveyed. Stockel argues that the circuit court erred when it ruled that the contract sufficiently described the real estate parcels and met the requirements of WIS. STAT. § 706.02 (2003-04).<sup>1</sup> He further contends that the court’s alternative ruling, that the Zellers would have been entitled to equitable relief had the contract been insufficient under § 706.02, was error. We disagree and affirm the judgment of the circuit court.

### FACTS

¶2 On February 17, 2000, the Zellers signed a residential offer to purchase the property known as 5530 Long Acre Road in the Town of Sheboygan for \$217,000. The documents were drawn up by Joan Stockel, a real estate agent and Stockel’s mother. Stockel accepted the offer. The contract included a provision stating: “Land to the East of garage to be to lot line to be deeded at later date to buyers. Buyer to purchase lot North of home in the future—for a price of \$22,500.00 in a period of 3 years—from the date of closing.” The contract included the homestead parcel’s address on Long Acre Road, but did not contain a legal description for any of the three parcels.

¶3 On March 29, 2000, Dennis Stockel deeded the homestead property to the Zellers. The Zellers contacted Stockel in 2002 to advise him that they were ready to complete the second part of the transaction and purchase the property to the north. Stockel indicated that he did not want to sell at that time. The Zellers

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

did not pursue the purchase at that point because they were only two years into the three-year term provided in the contract. In February 2003, anticipating the end of the three-year term, the Zellers again contacted Stockel to advise him they wished to purchase the property to the north. Stockel refused and the Zellers sought legal representation. Through counsel, the Zellers sent notice to Stockel that they intended to pursue the conveyance of the land to the east of the garage, and further that they wished to complete the purchase of the property to the north on or before March 27, 2003. Stockel refused to proceed with the sale.

¶4 The Zellers brought suit against Stockel and a bench trial ensued. The circuit court found in favor of the Zellers and ordered Stockel to convey title to the real estate east of the garage within ten days of entry of judgment. The court also ordered Stockel to convey title to the parcel north of the house upon receipt of the Zellers' payment of \$22,500 within ten days of entry of judgment. Stockel appeals.

## DISCUSSION

¶5 Stockel does not contest the circuit court's holding that he is to convey the parcel east of the garage to the Zellers; therefore, we affirm that portion of the judgment without further discussion. Turning to the contested north parcel, Stockel's issues on appeal are first, whether the contract for the north parcel was vitiated under WIS. STAT. § 706.02 because the land was insufficiently identified and second, whether the Zellers are nonetheless entitled to equitable relief.

¶6 Formal requisites for conveyances of real property are found in WIS. STAT. § 706.02, often referred to as the statute of frauds. The statute reads in relevant part: "Transactions under s. 706.001(1) shall not be valid unless

evidenced by a conveyance that satisfies all of the following: (a) Identifies the parties; and (b) Identifies the land; and (c) Identifies the interest conveyed ....” Sec. 706.02(1). Standing alone, the sales agreement between Stockel and the Zellers does not identify the north parcel’s northern boundary. The Zellers submit that the conveyance satisfies the statute of frauds by reference to extrinsic evidence as permitted by § 706.02(2); specifically, they present a survey conducted on March 22, 2003, which places the northern border of the north parcel along a row of pine trees. Extrinsic evidence is allowable in certain circumstances; the statute states that a conveyance may satisfy the statute of frauds:

(a) By specific reference, in a writing signed as required, to extrinsic writings in existence when the conveyance is executed; or

(b) By physical annexation of several writings to one another, with the mutual consent of the parties; or

(c) By several writings which show expressly on their faces that they refer to the same transaction, and which the parties have mutually acknowledged by conduct or agreement as evidences of the transaction.

*Id.* The survey, however, was not in existence at the time of the closing and could not have been physically annexed to the contract. Although on its face the survey refers to the original transaction and references the north parcel as the “proposed merger,” Stockel disputes that the survey is evidence of the parties’ intent in the original transaction. Because the extrinsic written evidence presented by the Zellers does not comport with the requirements of § 706.02(2), the survey does not resolve the contract’s deficiency under the statute of frauds.

¶7 However, WIS. STAT. § 706.04 provides the conditions under which a circuit court may consult equitable doctrines to enforce a promise to convey land

despite noncompliance with the statute of frauds. *Lenhardt v. Lenhardt*, 2000 WI App 201, ¶7, 238 Wis. 2d 535, 618 N.W.2d 218. The statute reads as follows:

**Equitable relief.** A transaction which does not satisfy one or more of the requirements of s. 706.02 may be enforceable in whole or in part under doctrines of equity, provided all of the elements of the transaction are clearly and satisfactorily proved and, in addition:

(1) The deficiency of the conveyance may be supplied by reformation in equity; or

(2) The party against whom enforcement is sought would be unjustly enriched if enforcement of the transaction were denied; or

(3) The party against whom enforcement is sought is equitably estopped from asserting the deficiency. A party may be so estopped whenever, pursuant to the transaction and in good faith reliance thereon, the party claiming estoppel has changed his or her position to the party's substantial detriment under circumstances such that the detriment so incurred may not be effectively recovered otherwise than by enforcement of the transaction, and either:

(a) The grantee has been admitted into substantial possession or use of the premises or has been permitted to retain such possession or use after termination of a prior right thereto; or

(b) The detriment so incurred was incurred with the prior knowing consent or approval of the party sought to be estopped.

Sec. 706.04. We note that specific performance is an equitable remedy. *Lenhardt*, 238 Wis. 2d 535, ¶6. For an equitable claim to succeed under § 706.04, the proponent must meet two requirements: (1) the elements of the transaction must be clearly and satisfactorily proved and (2) the transaction must fall within one of three exceptions. *Spensley Feeds, Inc. v. Livingston Feed & Lumber, Inc.*, 128 Wis. 2d 279, 288, 381 N.W.2d 601 (Ct. App. 1985).

¶8 Our standard of review in this matter is mixed. The factual findings of the circuit court will be upheld unless clearly erroneous. *Lenhardt*, 238 Wis. 2d 535, ¶6. We review a circuit court’s decision in equity to determine whether there was an erroneous exercise of discretion, even where the contract is in writing. *Id.* Whether the Zellers meet the applicable legal standards, however, is a question of law for de novo review. *See id.*

¶9 Generally, in reviewing a conveyance instrument for compliance with the statute of frauds, we consider whether there is ambiguity or uncertainty as to any of the essential elements of the document. *Edlebeck v. Barnes*, 63 Wis. 2d 240, 245, 216 N.W.2d 551 (1974). Stockel characterizes the contested contractual language regarding the north parcel as “an agreement to agree” about details of the sale in the future. Stockel argues that the boundaries of the north parcel are a “material part of the agreement and appear to be left open for future negotiation.” Agreements for future negotiation are too vague to create an enforceable contract. *See Dunlop v. Laitsch*, 16 Wis. 2d 36, 42, 113 N.W.2d 551 (1962).

¶10 We disagree with Stockel’s characterization of the language in the contract. An indefinite or ambiguous contract term can be proved by considering the surrounding circumstances. *Perkins v. Gosewehr*, 98 Wis. 2d 158, 163-64, 295 N.W.2d 789 (Ct. App. 1980). In order for us to draw on extrinsic evidence, however, the contract itself “must provide some foundation, link or key to the extrinsic evidence.” *Edlebeck*, 63 Wis. 2d at 245. Here, the contract states that the Zellers were to “purchase lot North of home in the future—for a price of \$22,500.00 in a period of 3 years—from the date of closing.” Further, the contract states that the boundary would be “surveyed as to buyer’s [and] seller’s agreed corner lines.” We conclude there is a sufficient link between the contractual language itself and the evidence presented at trial.

¶11 Certainty of contract terms concerns whether the parties had a meeting of the minds. *Herder Hallmark Consultants, Inc. v. Regnier Consulting Group, Inc.*, 2004 WI App 134, ¶8, 275 Wis. 2d 349, 685 N.W.2d 564, *review denied*, 2004 WI 138, 276 Wis. 2d 28, 689 N.W.2d 56 (WI Sept. 1, 2004) (No. 2003AP1917). Here, the circuit court determined that the parties had struck a bargain with regard to the sale of the north parcel. Specifically, it held that “[t]here was a meeting of the minds between Michael and Barbara Zeller, plaintiffs, and Dennis Stockel, defendant, and his mother, Joan Stockel, that the land to the north of the house to the tree line was to be transferred to the plaintiffs for \$22,500.00 within 3 years of the original close.” Record facts support this finding.

¶12 The Zellers testified that they specifically referenced the tree line when negotiating the sale. Joan Stockel indicated that the price for the entire property, including the north parcel, would be \$250,000. Barbara Zeller stated that they were not preapproved for a loan of that amount and that if they could not purchase the property north of the homestead, up to the tree line, they did not want to purchase the property at all. Joan Stockel indicated that the Zellers should not worry about it because they would work it out. The tree line provided privacy for the property and represented the end of the groomed area of the lawn. Also, the 2003 survey received into evidence at trial fixed the boundary of the north parcel at the tree line as described by the Zellers.

¶13 Although the primary legal issue differs, we take guidance from our supreme court’s discussion of unjust enrichment in *Meyer v. Ludwig*, 65 Wis. 2d

280, 222 N.W.2d 679 (1974).<sup>2</sup> There, our supreme court concluded that Meyer, the property owner, would be unjustly enriched by retention of the property after Ludwig invested substantial time, labor and money over a period of years in reliance on the promise that the property would eventually belong to her. *Id.* at 287. Similarly, the Zellers invested substantial money and effort that demonstrated they considered the north parcel to the tree line to be their concern. At Joan Stockel's request, and believing that they would own the north parcel to the tree line within three years, the Zellers groomed the lawn, tended a garden, and generally maintained and used the property north of the homestead. Most significantly, the Zellers completed the purchase of the homestead parcel for \$217,000 because they believed the north parcel would be theirs within three years.

## CONCLUSION

¶14 We conclude that the transaction for sale of the north parcel did not comport with the statute of frauds; furthermore, the extrinsic evidence did not resolve the deficiency. We hold that the Zellers are nonetheless entitled to the equitable remedy of specific performance. We agree with the circuit court's determination that the elements of the transaction were clearly and satisfactorily proved. *See Spensley Feeds*, 128 Wis. 2d at 288. Further, the transaction falls within one of the enumerated exceptions to the statute of frauds because Stockel

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<sup>2</sup> In *Meyer v. Ludwig*, 65 Wis. 2d 280, 222 N.W.2d 679 (1974), our supreme court discussed unjust enrichment as it related to the imposition of a constructive trust. Nonetheless, the court's treatment of the facts regarding one party's substantial investment of money and labor in reliance on another's promise to convey informs our decision as to whether Stockel would be unjustly enriched if he were allowed to keep the north parcel.



would be unjustly enriched if enforcement of the transaction were denied. *See id.*; WIS. STAT. § 706.04(2).

*By the Court.*—Judgment affirmed.

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