COURT OF APPEALS
DECISION
DATED AND FILED

February 11, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2484-FT **Cir. Ct. No. 01-PR-4**

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

THE ESTATE OF HARVEY L. TUCKER,

APPELLANT,

V.

FOREST COUNTY POTAWATOMI COMMUNITY,

RESPONDENT.

APPEAL from a judgment of the circuit court for Forest County: ROBERT E. KINNEY, Judge. *Affirmed*.

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

¶1 PER CURIAM. The Estate of Harvey Tucker, deceased, appeals a summary judgment ordering its personal representative to convey Tucker's home to the Forest County Potawatomi Community.[1] It contends that the transaction

[1] This is an expedited appeal under WIS. STAT. RULE 809.17. All statutory references are to the 1999-2000 version unless otherwise noted.

failed to comply with the statute of frauds and is time barred under WIS. STAT. § 893.43 and the doctrine of laches. It further argues that the Community's own policies and guidelines prohibit enforcement of its claim. We affirm the judgment.

BACKGROUND

¶2 This dispute concerns the probate of the Estate of Harvey Tucker, an elder member of the Forest County Potawatomi Community, who built a house on privately owned land with funds he obtained from the Community's home loan program. In response to Tucker's loan application, the Community advised him by letter:

> The information that you submitted has been reviewed by the housing committee.
>
> Since you are planning to build your home on your privately owned land we call your attention to the "highlighted" paragraph of the Tribal Housing Policies & Guideline, a copy is enclosed. Please consider the sentence "Upon the death of surviving spouse, the home and land will revert back to the Tribe to be rented or sold."

¶3 The Community granted a loan of $69,035.75 and Tucker signed a "promissory note" that made no provision for repayment, but stated that "I and my spouse will be given a life estate to the home if I am receiving assistance as an elder. I understand upon our death the home will revert back to the Forest County Potowatomi Tribe."[2]

[2] The parties raise no issue with respect to spousal interest or whether Tucker was receiving assistance.

¶4 Tucker never repaid any sums he received from the Community pursuant to its home loan program and the "note" that he signed.[3] After Tucker's death, the Community filed a claim against his Estate for recognition of its remainder interest in the home or imposition of an equitable lien in the amount of the loan. The Estate objected, and the Community moved for summary judgment on its claim. At the hearing on its motion, the Community asked the court to apply the principles of unjust enrichment. The court granted the Community's judgment, explaining:

> I believe that we do have to resort to equitable principles.
>
> ….
>
> I think that what we have [are] facts that are undisputed which really necessitate an equitable remedy. Unless there is to be a total windfall here, unless there is to be unjust enrichment, we have to use equity … to do justice. And in that regard I think we have to use equity to, for example, reform the documents here to … insert the legal description of the property where this house was built ….
>
> [t]he parties here don't quibble about where Mr. Tucker lived.

The court granted the Community's summary judgment motion. The Estate appeals the judgment requiring conveyance of Tucker's home to the Community.

[3] The Community's housing authorities also mailed Tucker the note and mortgage documents to secure the loan, but those documents were unsigned and apparently never returned.

DISCUSSION

1. Statute of Frauds

¶5 The Estate argues that because the transaction was not in writing, any alleged agreement fails under WIS. STAT. § 706.02, the statute of frauds. We conclude that despite non-compliance with the statute of frauds, the trial court properly granted equitable relief. When reviewing a summary judgment, we perform the same function as the trial court and our review is de novo. *See* ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 315, 401 N.W.2d 816 (1987). Summary judgment is appropriate when no material facts are in dispute and the moving party is entitled to judgment as a matter of law. *See* WIS. STAT. § 802.08. The issue before us requires the application of a statute to undisputed facts, a question of law, to which we owe no deference to the circuit court. ***Nottelson v. ILHR Dept.***, 94 Wis. 2d 106, 116, 287 N.W.2d 763 (1980).

¶6 The statute of frauds requires that a written conveyance evidence a transaction for the sale of land. ***Id.*** Nonetheless, when no adequate writing exists, as in the present case,[4] "there may still be a valid agreement for the transfer of land if the provisions of sec. 706.04, Stats., are met." ***Nelson v. Albrechtson***, 93 Wis. 2d 552, 556, 287 N.W.2d 811 (1980). This statute provides for enforcement in equity of a transaction that does not satisfy one or more of the requirements of the statute of frauds.[5]

[4] It is undisputed that the transaction fails to comply with WIS. STAT. § 706.02, the statute of frauds.

[5] WISCONSIN STAT. § 706.04, entitled "Equitable relief" provides:

(continued)

¶7 Under WIS. STAT. § 706.04, there are two requirements to enforce a real estate transaction not evidenced by a valid writing. The first is that the elements of the transaction must be clearly and satisfactorily proved. ***Nelson***, 93 Wis. 2d at 559-60. The second is that the transaction must fall within one of the exceptions enumerated in that section. ***Id.***

¶8 The record supports the court's implicit determination that the elements of the transaction were clearly and satisfactorily proved. As the court observed, there was no "quibble" as to the identification of the house where Tucker lived. There is no dispute regarding the identities of the parties. Also, it was undisputed that Tucker received $69,035 from the Community to build his

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> 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:
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> (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.

house and did not repay it. Additionally, he agreed in writing that upon his death the house would revert to the Community. This record supports the court's conclusion that the first requirement of WIS. STAT. § 706.04 was satisfied.

¶9 The record further supports the court's conclusion that the second requirement, that the transaction must fall within one of the exceptions enumerated in WIS. STAT. § 706.04, is fulfilled. Subsection (2) requires: "The party against whom enforcement is sought would be unjustly enriched if enforcement of the transaction were denied[.]"

> The elements of an unjust enrichment claim are: (1) a benefit conferred upon the defendant by the plaintiff; (2) an appreciation or knowledge by the defendant of the benefit; and (3) acceptance or retention by the defendant of the benefit under circumstances making it inequitable for the defendant to retain the benefit without payment of its value.

Puttkammer v. Minth, 83 Wis. 2d 686, 688-89, 266 N.W.2d 361 (1978).

¶10 There is no dispute that Tucker accepted nearly $70,000 of the Community's funds to build his house and that he never repaid any part of it. Accordingly, the court was entitled to conclude that the Community conferred a benefit upon Tucker that he had knowledge of, accepted and retained, thus satisfying the first two elements of an unjust enrichment claim. Also, Tucker agreed in writing that upon his death the home would revert to the Community, supporting the third element. The court fashioned a remedy to avoid what it deemed to be a windfall to the Estate. The record supports the court's determination that the Estate would be unjustly enriched if enforcement of the transaction were denied. Because the record supports the application of WIS. STAT. § 706.04, the statute of frauds does not bar relief.

2. Statute of Limitations

¶11 Next, the Estate argues that the Community's claim is time barred under WIS. STAT. § 893.43, the six-year statute of limitations for contract actions. We disagree. Generally, a statute of limitations begins to run when the cause of action accrues. WIS. STAT. § 893.04. A cause of action accrues when there is a claim capable of present enforcement, a suable party against whom it may be enforced and a party who has a present right to enforce it. ***Crawford v. Shepard***, 86 Wis. 2d 362, 365-66, 272 N.W.2d 401 (Ct. App. 1978).

¶12 Tucker passed away on March 14, 2001. Because the Community filed its claim against the Estate on June 6, 2001, its claim was timely filed. A future interest is considered contingent while the persons to whom or event on which it is dependent to take effect remains uncertain. ***Will of Reimers***, 242 Wis. 233, 238, 7 N.W.2d 857 (1943). The court concluded that under WIS. STAT. § 706.04 Tucker created a life estate, a conclusion we uphold, and therefore the Community's interest in the real estate would be one of "remainder," meaning that it would not take effect during Tucker's life. *See* WIS. STAT. §§ 700.02, 700.04(2). Consequently, the Community could not have maintained an action for the recovery of the land during Tucker's lifetime. *See* ***Barrett v. Stradl***, 73 Wis. 385, 386-95, 41 N.W. 439 (1889). Because the Community had no right to enforce its claim until after Tucker's death, its cause of action did not accrue prior to his death.

¶13 The Estate, nonetheless, argues that the Community approved the funds to Tucker pending "the land he is building on will be turned over to the Tribe." It posits that the Community imposed a condition precedent that was not fulfilled before the Community made its first disbursement to Tucker on

February 7, 1995, and therefore its cause of action accrued at that time. Because the Community did not file the petition to administer the Estate until April 19, 2001, the Estate reasons that its claim is outside the six-year statute of limitations.

¶14 The Estate's analysis is unpersuasive. When a contract provides a condition precedent,

> the fact upon which the condition is based must occur "before a duty of immediate performance arises," unless the same has been excused. The insertion of a condition precedent in a contract does not render the same void but only delays the enforceability of the contract until the condition precedent has taken place.

Kubly v. Wisconsin DOR, 70 Wis. 2d 74, 77, 233 N.W.2d 369 (1975) (citation omitted). Applying these principles, Tucker's failure to execute a deed would not render his agreement with the Community void, but would delay his right to enforce any obligation on the part of the Community to disburse the funds. We conclude that the Estate's analysis is inapplicable.

¶15 Next, the Estate argues that the doctrine of laches bars the Community's claim. We disagree. Laches is an equitable doctrine that recognizes that "a party ought not to be heard when he has not asserted his right for an unreasonable length of time or that he was lacking in diligence in discovering and asserting his right in such a manner so as to place the other party at a disadvantage." ***In re Estate of Flejter***, 2001 WI App 26, ¶40, 240 Wis. 2d 401, 623 N.W.2d 552. The elements of laches are: "(1) unreasonable delay; (2) knowledge of and acquiescence in the course of events; and (3) prejudice to the party asserting laches." ***Id.*** at ¶41.

> The reasonableness of delay is a conclusion of law dependent on how the fact-finder evaluates the totality of the evidence. From the evidence in the record, another fact-finder might readily conclude that the delay in asserting a

> claim … was reasonable. That, however, is not the correct standard of review. As noted earlier, we grant deference to the fact-finder when a "reasonableness standard must be applied because of the unique position occupied by the fact-finder in assessing the quality of the evidence placed before it."

Id. at ¶47.

¶16 Here the circuit court determined: "[I]f the agreement was, as I find it to have been, that Mr. Tucker would be permitted to live in the house until his death, that is, if he had a life estate in it, then it certainly shouldn't surprise anybody that … no action would be started until after his demise." In the words of the ***Flejter*** case, "[w]e can find no reversible fault in this exercise of discretion." ***Id.*** at ¶48. The court's decision rested upon undisputed facts, the correct application of legal principles, and evinced a rational basis. Consequently, we do not disturb it on appeal.

¶17 Finally, the Estate argues that the Community's own housing policies prohibit recognition of the Community's claim against the estate. We disagree. The interpretation of a document is a question of law that we review de novo. ***Cohn v. Town of Randall***, 2001 WI App 176, ¶5, 247 Wis. 2d 118, 633 N.W.2d 674.

¶18 The Estate quotes the following language in support of its argument:

> Elderly homes built with tribal monies on tribal land will be built on one (1) level with a basement. Life estates will be given to the elderly tribal member and their spouse. There will be no repayment required of the elderly. Upon death of surviving spouse, the home will revert back to the tribe and remain designated as an elderly home.

The Estate argues that "[t]hese guidelines specifically omit any requirement of the giving of a life estate as to elders who build homes on tribal land" and therefore

Tucker was exempt from reserving a life estate. We are not persuaded. The guidelines provide for giving monies for on- and off-reservation buildings. The guidelines speak to life estates generally, and do not specifically exempt off reservation housing from the life estate requirement. We conclude that the Community guidelines omission does not preclude the court's application of equitable relief.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.21(1)(b)5.