

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 18, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP1294

Cir. Ct. No. 2006CV129

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

SAM F & B, LLC,

PLAINTIFF-RESPONDENT,

V.

RICHARD S. MOLEPSKE AND KIM B. MOLEPSKE,

DEFENDANTS-APPELLANTS,

DOOR COUNTY REALTY, INC.,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Door County:
PETER C. DILTZ, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Richard and Kim Molepske appeal a summary judgment awarding \$50,000 to Sam F & B, LLC, as liquidated damages. The Molepskes argue they properly rescinded their offer to purchase a condominium because the time frame for rescission could not begin until they personally received required disclosures. We conclude the purchase offer contract unambiguously provides otherwise and affirm.

Background

¶2 On April 14, 2005, the Molepskes submitted a “WB-14 Residential Condominium Offer to Purchase” for a unit in the Town of Gibraltar. Sellers William and Diane Pinkham¹ counteroffered, and the Molepskes accepted the counteroffer on April 26. Construction on the condominium began after the contract was finalized.

¶3 The agreement set the purchase price at \$700,000, and required \$50,000 in earnest money be deposited with Door County Realty, the agency that drafted the contract. In lines 32-33 of the contract, Connie Erickson of the realty company was listed as “Buyer’s recipient for delivery.” Erickson was also listed as the seller’s recipient in lines 30-31.

¶4 The Wisconsin Statutes require certain disclosures be made to prospective condominium purchasers prior to closing. *See* WIS. STAT. § 703.33.²

¹ At some point, the Pinkhams evidently assigned their interest in the condominium to the present plaintiff, Sam F & B, LLC. It is not clear whether the Pinkhams are affiliated with the company, but any relationship is irrelevant to this appeal.

² All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

The statutes also require buyers be given five business days from the receipt of mandatory disclosures to rescind the contract.

¶5 On January 12, 2006, an agent of the condominium's general contractor personally delivered the required disclosure documents to Erickson, named as the buyer's recipient. The Molepskes received the documents personally on January 23, 2006, at their winter home in Florida. On January 24, the Molepskes attempted to rescind their offer, notifying Erickson and William Pinkham that they disapproved of the disclosure documents.

¶6 The Molepskes demanded the return of their earnest money and, when the parties could not agree on the status of the Molepskes' rescission, Sam F & B sued for the earnest money as liquidated damages under the contract. Sam F & B moved for summary judgment, which the court granted, concluding the purchase contract unambiguously designated Erickson the buyer's recipient. Because she had received the disclosures on January 12, and the Molepskes did not rescind until January 24, the court concluded their rescission was untimely and ineffective, entitling Sam F & B to the damages.

Discussion

¶7 We review summary judgments de novo, using the same methodology as the circuit court. *Wisconsin Label Corp. v. Northbrook Prop. & Cas. Ins. Co.*, 2000 WI 26, ¶22, 233 Wis. 2d 314, 607 N.W.2d 276. Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." WIS. STAT. § 802.08(2).

¶8 Here, however, there is no factual dispute. Resolution of this case hinges on interpretation of a statute and of a contract, both of which are questions of law we review de novo. See *Hutson v. State of Wis. Personnel Comm’n*, 2003 WI 97, ¶31, 263 Wis. 2d 612, 665 N.W.2d 212 (statutes); *Ford Motor Co. v. Lyons*, 137 Wis. 2d 397, 460, 405 N.W.2d 354 (1987) (contracts).

¶9 Statutory interpretation begins with the language of the statute. *Rocker v. USAA Cas. Ins. Co.*, 2006 WI 26, ¶24, 289 Wis. 2d 294, 711 N.W.2d 634. If the meaning of the statute is plain, we ordinarily stop our inquiry there. *Id.* When we interpret a contract, our primary goal is to determine and give effect to the parties’ intent. *Wisconsin Label*, 233 Wis. 2d 314, ¶23. If a contract is unambiguous, we apply its literal meaning. *Id.* Whether any ambiguity exists is a question of law. *Id.*, ¶24.

¶10 The contract here states, in relevant part:

[D]elivery of documents and written notices to a Party shall be effective only when accomplished by one of the methods specified at lines 27-36.

(1) By depositing the document or written notice postage or fees prepaid ... addressed either to the Party, or to the Party’s recipient for delivery designated at lines 30 or 32 (if any), for delivery to the Party’s delivery address at lines 31 or 33.

....

(2) By giving the document or written notice personally to the Party of the Party’s recipient for delivery if an individual is designated at lines 30 or 32. (Line numbering omitted.)

Line 32 designated the “Buyer’s recipient for delivery (optional)” as “C/O Connie Erickson” and the specified address in line 33 is Erickson’s.

¶11 The circuit court concluded, and we agree, that the contract is unambiguous. The contract provides that documents may be delivered to the party personally or via United States mail or other delivery service, or they may be delivered to the party's designated recipient, if there is one. Here, the contract designated Erickson as the Molepskes' recipient, which means delivery was effective by "giving the document or written notice personally" to her. Thus, Erickson's receipt of the disclosures, not the Molepskes' receipt in Florida, started the clock on the time frame for rescission.

¶12 The Molepskes challenge this conclusion as contrary to the statutes. Required materials "shall be delivered to a prospective purchaser" and "[r]ights of purchasers under this section may not be waived in the contract of sale...." WIS. STAT. § 703.33(2), (6). Thus, the Molepskes argue, only delivery to the purchaser personally starts the clock on the time for rescission. Designating a delivery agent, they claim, is akin to a prohibited waiver of rights under § 703.33(6). They further assert that that if "a condominium purchaser's right to receive and review condominium disclosure materials was altered by line 32 ... there would be no Realtor currently willing to sell condominiums and assume the liability...." We disagree.

¶13 Nothing about the statute suggests appointing an agent for delivery is akin to a waiver of rights: the required condominium disclosures must still be given. Moreover, designation of a recipient for delivery is entirely optional. A buyer who wishes to take no chances will only permit personal delivery and will not name a recipient. A realtor who wishes to assume no liability will not permit himself or herself to be named recipient, or will have the purchaser named recipient as a redundancy. Further, we expect most named recipients will ensure the party they represent timely receives all necessary documents, precisely to

avoid any possible liability arising from their tardiness. That the Molepskes did not object to Erickson as their named recipient, and she apparently delayed in sending them the documents, does not mean other agents will refuse to be a buyer's recipient.

¶14 The contract clearly designates Erickson as the Molepskes' recipient for delivery of documents. The contract also clearly states that delivery is effective if delivered to the named recipient. Nothing about the statute suggests that designation of such an agent is inappropriate or an impermissible waiver of rights. Because Erickson had the required disclosures on January 12 and the Molepskes did not attempt to rescind until January 24, their rescission was untimely and they breached the contract. Sam F & B was entitled to the \$50,000 liquidated damages as provided in the contract.

By the Court.—Judgment affirmed.

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

