

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 14, 2001**

Cornelia G. Clark  
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.

**No. 00-2165**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**LYNDA M. BOSER LARSON AND STEVEN G. LARSON,**

**PLAINTIFFS-RESPONDENTS,**

**V.**

**BERNARD SEIDLING, FOUR STAR PROPERTIES,  
SEIDLING TRUST AND CHRISTINE SEIDLING,**

**DEFENDANTS-THIRD-  
PARTY PLAINTIFFS-APPELLANTS,**

**V.**

**KEITH W. EWINGS AND JOAN M. EWINGS,**

**THIRD-PARTY DEFENDANTS.**

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APPEAL from a judgment of the circuit court for Dunn County:  
ROD W. SMELTZER, Judge. *Affirmed in part; reversed in part.*

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

¶1 PER CURIAM. Four Star Properties, Bernard and Christine Seidling and Seidling Trust appeal those parts of a judgment requiring them to refund alleged overpayments made on a land contract. The trial court concluded the land contract was ambiguous as to the starting date that the buyers, Lynda M. Boser Larson and Steven G. Larson, would pay the 1998 property taxes and interest on the amount owed. The court reformed the contract to require the Larsons to assume tax responsibility starting August 1, 1998, the date the first monthly payment was due. The court set the starting date for the interest payments to commence July 8, 1998, the date a federal court confirmed a foreclosure sale to Four Star Properties. Because we conclude that the land contract was not ambiguous and required the Larsons to assume the tax responsibility and pay interest from the date the parties signed the land contract, we reverse those parts of the judgment awarding the Larsons a refund of the alleged overpayments. The other aspects of the judgment have not been appealed and are affirmed.

¶2 Whether a contract is ambiguous is a question of law that we decide without deference to the trial court. *See Wausau Underwriters v. Dane County*, 142 Wis. 2d 315, 322, 417 N.W.2d 914 (Ct. App. 1987). A contract is ambiguous when it is susceptible to more than one reasonable interpretation. *See Wilke v. First Fed. Sav. & Loan*, 108 Wis. 2d 650, 653, 323 N.W.2d 179 (Ct. App. 1982). Unless the contract is ambiguous or contrary to public policy, the court has no right to modify its terms. *See Dykstra v. Arthur G. McKee & Co.*, 92 Wis. 2d 17, 38, 284 N.W.2d 692 (1979).

¶3 Four Star Properties was the high bidder for the property at a marshal's sale held May 7, 1998. On May 11, the Larsons signed a land contract agreeing to purchase portions of Four Star's contingent future right to the

property. The federal court confirmed the sale on July 8 and, with the agreement of all of the parties, the Larsons took possession on July 19, following the removal of the previous owners.

¶4 The relevant portions of the land contract provide: “Seller agrees to pay all delinquent real estate taxes which exist on this property and all accrued 1998 taxes up to the date this contract is executed ... Buyer shall escrow 1/12<sup>th</sup> the annual real estate tax with each monthly payment.” The trial court concluded that the contract was ambiguous because there is inconsistency between requiring 1/12<sup>th</sup> of the annual real estate taxes to be escrowed with each monthly payment starting August 1, 1998, but calculating the amount due from the date of execution, May 11, 1998.

¶5 We perceive no ambiguity or inconsistency in the terms relating to payment of the property taxes. The plain terms of the land contract terminated Four Star’s obligation to pay 1998 property taxes on the date the contract was signed by the parties. The Larsons recognized that the date of signing was the date of execution by making the \$15,400 downpayment that was due “at the execution” on May 11, 1998. The requirement that 1/12<sup>th</sup> of the annual real estate taxes be escrowed with each monthly payment does not conflict with the calculation of the amount due. The escrow provision merely specifies a mechanism for collecting the real estate tax. The contract required minimum monthly payments until the amount due was fully paid. The starting date for the installment payments does not affect the calculation of the total amount due.

¶6 Likewise, the contract language relating to interest payments is not ambiguous. The contract required payment of the balance “together with interest from the date hereof ....” “The date hereof” unambiguously means the date the

parties signed the contract. The contract does not provide for interest commencing at the time the installment payments start, the date of occupancy or the date the federal court confirmed the sale to Four Star.<sup>1</sup> We conclude that the court must enforce the unambiguous land contract language that requires interest paid from the date the contract was signed, May 11, 1998.

¶7 We sympathize with the trial court's attempt to make the land contract more fair. It is highly unusual to have land contract buyers agree to pay interest and taxes on property they cannot occupy and that the seller does not yet own. Nonetheless, there is no reason a buyer cannot agree by contract to assume any past, present or future obligations as payment for contingent, future property rights. The apparent unfairness of having the Larsons pay property taxes and interest for the additional two to three months reflects the unfavorable deal they made. The courts are powerless to save parties from disadvantageous terms in unambiguous contracts to which they have agreed. *See Old Tuckaway Assoc. v. City of Greenfield*, 180 Wis. 2d 254, 280-81, 509 N.W.2d 323 (Ct. App. 1993).

*By the Court.*—Judgment affirmed in part; reversed in part. Costs to the appellants.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

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<sup>1</sup> The impact of confirmation of the marshal's sale was covered in another contract provision that provided for a full refund if the court failed to confirm the marshal's sale.

