

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 2, 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. 01-0614

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

THEA BAUMSTEIN,

PLAINTIFF-RESPONDENT,

v.

PAAL MYKLEBUST,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County:
JAMES EVENSON, Judge. *Affirmed.*

¶1 DYKMAN, J. Paal Myklebust appeals from a money judgment of \$50,115 in favor of Thea Baumstein. Myklebust contends he is not a proper party to the action because he is a member of a limited liability company. Alternatively, he asserts that Baumstein is not entitled to any earnest money because the real estate transaction was completed. We disagree and affirm.

¶2 On August 28, 1999, Thea Baumstein gave Paal Myklebust \$500 and signed a document which might be a receipt, an option, or an offer to

purchase. The document refers to “Lot of (59).” The total price for the lot was either \$45,000 or \$50,000. Baumstein became concerned that her daughter and grandchildren would not be able to reside with her because Hickory Hills Estates was a retirement community, and asked for the return of her \$500. Myklebust then sent Baumstein a letter saying that under Wisconsin law, Baumstein’s daughter and grandchildren would be able to reside with her, and he would still hold the lot for her until further notice.

¶3 Later, Baumstein met with Myklebust again to discuss purchasing a home to be built on the lot. Myklebust drew up two documents, one stating that Baumstein paid “Dakota Ridge Homes LLC” \$50,000 for a down payment on a home and the lot, with a balance of \$108,744.45. Neither party signed or dated this document. The other document stated only that Baumstein paid “Dakota Ridge Homes LLC” \$49,500 for a down payment. Myklebust, but not Baumstein, signed this document. In May, Baumstein called Myklebust and again asked for a return of her money. Myklebust later told Baumstein that she owned the lot and that they were sending her the deed. On June 1, 2000, an attorney for Hickory Hills Estates, LLC, drew up a warranty deed and a real estate transfer return. Baumstein refused to sign the transfer return, and sued Myklebust for the return of her \$50,000. The trial court entered a money judgment of \$50,115 in favor of Baumstein—\$50,000 in earnest money and \$115 for costs.

ISSUES

1. Is Paal Myklebust a proper party defendant?
2. Did the parties reach an agreement for the transfer of real estate?

ANALYSIS

I. Proper Party Defendant

¶4 Myklebust claims he is not a proper party defendant because he did not own the property individually. He asserts that the lot was owned by Hickory Hills Estates, LLC and that Baumstein has not demonstrated sufficient reason for piercing the corporate veil. Whether Hickory Homes actually owned the lot, however, is not a dispositive factor, and the issue is not whether Hickory Homes' corporate veil should be pierced, but whether Myklebust gave Baumstein notice that he was acting on behalf of Hickory Homes. In *Benjamin Plumbing, Inc. v. Barnes*, 162 Wis. 2d 837, 470 N.W.2d 888 (1991), the court held that agents must disclose their corporate status in order to avoid personal liability, and have the burden of proving such. *Id.* at 851. Further, it is insufficient for an agent to state that he or she is acting on behalf of a corporation; to avoid individual liability, the agent must also disclose the corporation's identity. *Id.* at 848-49.

¶5 In this case, Myklebust has presented no evidence that he gave notice to Baumstein that he was acting as an agent for Hickory Hills between August 1999 and May 2000. He does not claim that he informed Baumstein orally that he was acting for Hickory Homes. The August 28 document that Myklebust relies on also does not support his position. Although the document indicates that Baumstein "paid" \$500 as a down payment to "Dakota Ridge Homes, LLC," it is Hickory Hills, not Dakota Ridge, for which Myklebust claims he was acting. Furthermore, who the money was paid to is of little consequence because it does not indicate who owned the property or communicate to Baumstein that Myklebust was acting for someone else. Most important, Myklebust signed his own name and *only* his name on the line denominated "Seller." In short, the

document indicates that Myklebust was acting as an individual and not on behalf of a limited liability company. With regard to the March 7 documents, even if we overlook the fact that Baumstein did not sign either document, they still do not indicate that Myklebust was acting for Hickory Hills any more than does the August 28 document.

¶6 Although Myklebust prepared a real estate transfer return and a warranty deed that indicates Hickory Hills was the seller of the lot, the documents are dated June 2000, which was after Baumstein told Myklebust that she wanted her money returned. In his brief, Myklebust also refers to various other documents that he claims prove that Hickory Hills owned the property. Myklebust does not claim, however, that Baumstein ever saw any of these documents. None of these documents, therefore, are relevant in determining whether Myklebust was properly named as a defendant.

¶7 The trial court found that in the agreements between Baumstein and Myklebust, Myklebust signed each document as an individual. That is exactly what the documents show. We find no reason to disturb the trial court's findings.

II. Transfer Agreement

¶8 Myklebust next asserts that, even if he is a proper defendant, Baumstein's claim must fail because the real estate transaction was completed. The trial court concluded, and we agree, that a "meeting of the minds" never occurred as to what Baumstein was purchasing. Myklebust claims the \$50,000 he received was for the lot only, while Baumstein thought it was a down payment on the home and lot. Furthermore, none of the documentation involved in the transfer complies with the requirements of Wisconsin's statute of frauds. *See* WIS. STAT. §§ 706.02(1)(a)-(g). Only the first document, Exhibit 1, is signed by both parties,

and that document does not give a description of the property being transferred,¹ the amount still due, or what type of document it is, whether it be an option, a receipt, or an offer to purchase. We therefore affirm the trial court's judgment of \$50,115 in favor of Thea Baumstein.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

¹ The only document signed by Baumstein describes the property purchased as “Lot of (59).” There is no mention of the plot or condominium, or where the plot is located. The deed which Hickory Hills Estates had drafted shows the inadequacy of the description found in the document Baumstein signed.

