

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MARCH 5, 1996

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

NOTICE

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

No. 95-1656

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**MARJORIE METZLER,
a/k/a MARJORIE H. METZLER,**

Plaintiff-Respondent,

v.

**DEANO U. JOHNSON
and PENNIE J. JOHNSON,**

Defendants-Appellants,

**USA FINANCIAL
SERVICES, INC.,
n/k/a AVCO FINANCIAL
SERVICES, INC.,**

Defendant.

APPEAL from a judgment and an order of the circuit court for Oconto County: LARRY L. JESKE, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Deano and Pennie Johnson appeal a summary judgment that granted Marjorie Metzler strict foreclosure of a three-year land contract. Under the land contract, the Johnsons agreed to make \$219.65 monthly payments at 10.5% interest for three years on a \$22,000 balance, with the unpaid balance due at the end of the third year. When the Johnsons were unable to make the balloon payment, Metzler permitted them to make larger monthly payments for several months. Eventually, after the Johnsons showed no prospects of paying the balloon payment, Metzler stopped the arrangement and commenced the strict foreclosure proceeding.

On appeal, the Johnsons argue that Metzler agreed to extend their land contract for an unlimited period. They cite payment receipts Metzler issued and letters from her lawyer. The trial court concluded that the Johnsons were alleging an oral modification of the land contract in violation of the statute of frauds. The trial court correctly granted summary judgment if Metzler showed a lack of material factual disputes and the right to judgment as a matter of law. *Powalka v. State Mut. Life Assur. Co.*, 53 Wis.2d 513, 518, 192 N.W.2d 852, 854 (1972). We reject the Johnsons' arguments and therefore affirm the summary judgment.

Nothing in the parties' writings created a sufficient agreement under the statute of frauds to extend the term of their land contract for an unlimited period. Writings will not satisfy the statute of frauds unless they are definite as to the parties' intent. See *Asplund v. Fisher*, 19 Wis.2d 450, 453, 120 N.W.2d 724, 726 (1963); *Stuesser v. Ebel*, 19 Wis.2d 591, 593, 120 N.W.2d 679, 681 (1963); *Thiel v. Jahns*, 252 Wis. 27, 30, 30 N.W.2d 189, 191 (1947). In support of their contention, the Johnsons have provided letters Metzler's lawyer wrote them regarding property taxes and payment receipts Metzler issued acknowledging the increased payments the Johnsons made after the land contract's expiration date. Such letters and receipts are insufficient under the statute of frauds to extend the term of a land contract for an unlimited period.

Rather, the statute of frauds requires a degree of definiteness that Metzler's receipts and her lawyer's letters did not possess. It compels the parties' writings to provide for the land contract modification with certainty and clarity. It does not sanction modification by implication. In order to extend the expired land contract for an unlimited period, the Johnsons needed writings that eliminated doubts as to the parties' intent. They may not rely on the

implications they see in writings that have other possible explanations. Here, Metzler's receipts, together with her lawyer's letters, were consistent with other scenarios besides the land contract's extension, such as a decision by Metzler to grant the Johnsons temporary forbearance by permitting what amounted to an informal redemption period before she commenced strict foreclosure proceedings. In sum, the trial court correctly granted Metzler summary judgment.¹

By the Court. – Judgment and order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

¹ The Johnsons make no claim for equitable relief under § 706.04, STATS., and we therefore do not address this issue. See *Waushara County v. Graf*, 166 Wis.2d 442, 451, 480 N.W.2d 16, 19 (1992).