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DISTRICT IV

May 21, 2014

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You are hereby notified that the Court has entered the following opinion and order:

2013AP408

Wayne R. Gardner v. Gloria J. Dibble (L.C. # 2011CV102)

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

Wayne Gardner appeals an order dismissing his complaint for specific performance of a right of first refusal relating to the sale of land owned by Gloria Dibble. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2011-12).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

The circuit court found that by January 22, 2011, Gloria Dibble gave Gardner notice of her decision to sell the property. The court further found that Gardner was four days late in exercising his right of first refusal because he did not send notice to Dibble until January 31, 2011.

On appeal, Gardner argues that the January 22 phone conversation with Dibble did not qualify as proper notice under his right of first refusal because it did not inform him of the terms on which she had agreed to sell to a third party. However, no such requirement is present in the relevant provision, which states: “Grantee shall have five days after the notice by grantor of sale to indicate his intent to the property.” Without citing Wisconsin authority on the point, Gardner suggests that the circuit court erred in failing to liberally construe the right of first refusal here so that it was “specific enough to be enforced.” However, Gardner fails to develop an argument, based on Wisconsin authority, that the right he bargained for involved more than simply the right to “indicate his intent” to purchase the property after receiving “notice ... of [its] sale.” The parties could have, but did not, bargain for the right to written notice of sale or the right to receive notice of various specific terms of sale. Accordingly, we conclude that Dibble’s notice to Gardner by telephone on January 22 was adequate notice to start the time running for him to indicate his intent. The circuit court properly dismissed Gardner’s complaint because his notice to Dibble was untimely.

IT IS ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals