



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

August 19, 2014

To:

Hon. Todd P. Wolf
Circuit Court Judge, Br. 3
Wood County Courthouse
400 Market St
Wisconsin Rapids, WI 54494

Cindy Joosten
Clerk of Circuit Court
Wood County Courthouse
P.O. Box 8095
Wisconsin Rapids, WI 54494

Nicholas J. Brazeau
Brazeau, Wefel, Kryshak & Nettesheim, LLP
P.O. Box 639
Wisconsin Rapids, WI 54495-0639

J. P. La Chapelle
Brazeau, Wefel, Kryshak & Nettesheim, LLP
P.O. Box 639
Wisconsin Rapids, WI 54495-0639

Benjamin J. Court
Messerli & Kramer, P.A.
100 S. 5th St., Ste 1400
Minneapolis, MN 55402-1217

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

2013AP2006

E & S Comfort Inn of Wisconsin, Inc. v. USAssets Wisconsin
Limited Partnership (L.C. # 2012CV363)

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

USAssets Wisconsin Limited Partnership, the seller of Americas Best Value Inn, appeals a summary judgment awarding the buyer, E & S Comfort Inn of Wisconsin, Inc., \$20,649.42 for breach of the sales contract. The circuit court concluded that the contract required the seller, USAssets, to pay the property taxes for the 2011 assessment. USAssets argues that the contract required the buyer, E & S Comfort Inn, to pay the 2011 assessment and that E & S Comfort Inn waived its right to any other interpretation of the contract by agreeing to pay the seller a credit of \$1,441.13, representing the prorated portion of the assessment from the date of closing to the end

of 2011. Upon our review of the record and the parties' briefs, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We summarily affirm.

The interpretation of a contract presents a question of law that we review without deference to the circuit court. *Borchardt v. Wilk*, 156 Wis. 2d 420, 427, 456 N.W.2d 653 (Ct. App. 1990). We construe the contract in a manner to make it a rational business instrument. *Id.* Our goal is to ascertain the parties' true intentions as expressed by the contractual language. *Town Bank v. City Real Estate Dev., LLC*, 2010 WI 134, ¶33, 330 Wis. 2d 340, 793 N.W.2d 476. The best indication of the parties' intent is the language of the contract itself. *Id.* When the language of a contract is plain and unambiguous, the court must construe the contract as it stands according to its literal terms contained within the four corners of the document. *See Gorton v. Hostak, Henzl & Bichler, S.C.*, 217 Wis. 2d 493, 506, 577 N.W.2d 617 (1998). The terms of the contract are to be given their plain or ordinary meaning. *Huml v. Vlazny*, 2006 WI 87, ¶52, 293 Wis. 2d 169, 716 N.W.2d 807.

The contract in this case addressed the proration of property taxes as follows:

Taxes Prorated: Real estate taxes and special assessments, if any, on the Property payable in the calendar year in which the sale is closed shall be prorated as of the Closing Date. Seller shall pay all real estate taxes payable in the years prior to Closing. Purchaser shall pay all real estate taxes payable in the years following Closing, including special assessments which are levied or pending as of the Closing Date.

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

As the circuit court noted, the second and third sentences of that provision require the seller to pay the property taxes in the years prior to closing, and require the buyer to pay the taxes for the years following closing. The first sentence controls proration of the property taxes for the 2011 assessment. The first sentence requires the taxes to be prorated as of the date of closing, meaning the seller is responsible for the property tax assessment for the time from January 1 to December 15, 2011, the date of the closing.

USAssets focuses on the word “payable,” arguing that the 2011 assessment was not payable until 2012. We disagree. The parties could have paid the property tax for the 2011 assessment before the end of that year. USAssets cites this court’s unpublished decision in *Riley v. Town of Nasewaupee*, No. 2012AP1509, unpublished slip op. (WI App Mar. 5, 2013), for the proposition that a tax assessment is “payable” by January 31 in the year following the assessment. The issue in *Riley* involved the statute of limitations for contesting an assessment. Utilizing the last date taxes can be paid without penalty for that purpose does not control the plain meaning of the contract in this case or shed any light on the parties’ intent.

At closing, E & S Comfort Inn paid an additional \$1,441.13, representing the prorated property taxes from December 15 through December 31, 2011. Contrary to USAssets’ argument, that payment does not constitute a waiver of E & S Comfort Inn’s rights under the contract. Rather, it is entirely consistent with the circuit court’s interpretation of the contract to require the buyer to pay only the portion of the 2011 assessment from the date of closing to the end of the year. USAssets, having accepted

that proration payment at closing, became responsible for paying the assessment for the entire year.

IT IS ORDERED that the judgment is summarily affirmed under WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals