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DISTRICT II

September 15, 2017

To:

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

2016AP2346

Joseph R. Schweitzer v. Timothy P. Noonan (L.C. # 2016CV786)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

In this strict foreclosure action, Timothy P. Noonan and Linda M. Noonan appeal from a judgment granting summary judgment to Joseph R. Schweitzer. 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 (2015-16).¹ We affirm the judgment of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

On November 13, 2013, the Noonans entered into a land contract with Schweitzer for real property located in Racine County. Under the terms of the contract, the Noonans were required to pay the entire balance due to Schweitzer no later than September 15, 2014. The Noonans did not make that payment and were notified of their default.

Based upon the Noonans' failure to make the required payment after notice of default, Schweitzer commenced a strict foreclosure action against them on January 19, 2016. He then moved for summary judgment, which the Noonans opposed. Following a hearing on the matter, the circuit court granted Schweitzer's motion. This appeal follows.

We review a grant of summary judgment de novo, using the same methodology as the circuit court. See *Estate of Sheppard v. Schleis*, 2010 WI 32, ¶15, 324 Wis. 2d 41, 782 N.W.2d 85. Summary judgment is proper if there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. See *id.*, WIS. STAT. § 802.08(2).

On appeal, the Noonans contend that the circuit court erred in granting summary judgment to Schweitzer. They assert that Schweitzer's proof was inadequate and that genuine issues of material fact exist based upon the pleadings and conduct of the parties after they entered into the contract. They further assert that Schweitzer was a mortgage loan originator, who failed to comply with various state and federal requirements.

Upon review of the record, we are satisfied that Schweitzer presented adequate proof to support an award of summary judgment. The affidavits submitted by him establish that (1) he entered into a land contract with the Noonans; (2) the Noonans breached the contract by failing to pay the entire balance due; (3) Schweitzer gave notice of default; and (4) the Noonans failed to make the required payment after notice of default. Nothing in the pleadings defeats those

evidentiary facts. Moreover, the conduct of the parties after they entered into the contract does not modify the contract's terms under the statute of frauds. See *Prezioso v. Aerts*, 2014 WI App 126, ¶¶21-22, 358 Wis. 2d 714, 858 N.W.2d 386 (the statute of frauds governs transactions by which an interest in land may be affected and requires all essential terms to be in writing).

We are also satisfied that Schweitzer was not a mortgage loan originator who failed to comply with various state and federal requirements. Again, the contract at issue was a land contract. A land contract is simply an agreement to transfer title to a property once certain conditions have been met. It is not a loan in which the borrower gives the lender a lien against a property until funds are paid back. Indeed, Schweitzer gave no funds in this case. As a result, the requirements cited by the Noonans simply do not apply.

In the end, we conclude that the circuit court properly granted summary judgment to Schweitzer. Accordingly, we affirm.²

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals

² To the extent we have not addressed an argument raised by the Noonans on appeal, the argument is deemed rejected. See *State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).