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DISTRICT III

April 30, 2019

To:

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

2018AP916-FT

Travis P. Krizan v. Daniel Krizan (L. C. No. 2014CV32)

Before Stark, P.J., Hruz and Seidl, 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).

Travis and Ronald Krizan (the “Intervening Krizans”) appeal a judgment dismissing their claims against Daniel, Beverly, Dale and Scott Krizan (the “Owner Krizans”) as identified in the Intervening Krizans’ Third Amended Intervention Complaint filed on March 2, 2015.¹ Based

¹ This is an expedited appeal under WIS. STAT. RULE 809.17 (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

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. We reverse and remand for further proceedings.

The Intervening Krizans' Third Amended Intervention Complaint asserted three claims: (1) a claim against the Owner Krizans for misrepresentation, in violation of WIS. STAT. § 100.18; (2) a claim against the Owner Krizans for a theft by false representation under WIS. STAT. § 895.446; and (3) a claim seeking the imposition of an equitable mortgage over certain of the Owner Krizans' real property on which the Intervening Krizans had made a purchase offer. Chad and Brenda Webster, who had made a purchase offer on the same property, moved for summary judgment, asserting that their offer had priority over the Intervening Krizans' competing offer. The issue of the competing offers' priority was litigated to a conclusion with this court's decision in *Webster v. Krizan*, No. 2016AP25, unpublished slip op. (WI App Mar. 28, 2017) (hereinafter, *Krizan I*).

Following remittitur in *Krizan I*, the Intervening Krizans engaged in further motion practice in an effort to bar the closing on the Websters' purchase offer. This led to a second appeal involving the Intervening Krizans' assertion that they were entitled to statutory interest on a payment they had advanced in connection with their purchase offer. *See Webster v. Krizan*, Nos. 2017AP1890, 2017AP2147, unpublished slip op. (WI App Jan. 15, 2019) (hereinafter, *Krizan II*). *Krizan II* also affirmed the circuit court's order imposing sanctions against the Intervening Krizans' attorney, Drew Ryberg, for continuing a frivolous motion to bar the closing. *Id.*

Following this court's decision in *Krizan II*, the circuit court concluded that all issues raised in the Intervening Krizans' Third Amended Intervention Complaint had been adjudicated, and it dismissed that complaint in its entirety. This conclusion was apparently based upon our statement in *Krizan I* that "we conclude the Websters are entitled to summary judgment dismissing the third amended complaint." *Krizan I*, ¶6. The Intervening Krizans maintain that after we decided *Krizan II*, the circuit court's order dismissing the misrepresentation and fraud claims that had been asserted only against the Owner Krizans was in error.

We agree with the Intervening Krizans. The appeal in *Krizan I* pertained only to the priority and enforceability of the competing purchase offers. The cross-motions for summary judgement that ultimately led to the appeal in *Krizan I* were also limited to those issues. Neither the circuit court's summary judgment order directly on review in *Krizan I*, nor this court's decision affirming that order, purported to resolve the Intervening Krizans' misrepresentation or fraud claims against the Owner Krizans. Indeed, the order under review in *Krizan I* dismissed the Intervening Krizans' claims "only insofar as they seek relief from the plaintiffs Chad and Brenda Webster."

Based on this record, it appears the Intervening Krizans' misrepresentation and fraud claims asserted in the Third Amended Intervention Complaint have been pending since 2015 and have not yet been litigated. We therefore reverse the order dismissing those claims and remand to the circuit court for further proceedings.

Therefore,

IT IS ORDERED that the judgment is summarily reversed and cause remanded for further proceedings. *See* WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals