

FIFTH DIVISION
November 23, 2016

No. 1-14-1812

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WELLS STREET COMPANY, INC.,)	Appeal from the Circuit
an Illinois corporation,)	Court of Cook County,
)	Illinois
Plaintiff-Appellant,)	
)	
v.)	No. 12 CH 45448
)	
1355 WELLS, LLC, an Illinois limited)	
liability company,)	Honorable
)	David B. Atkins,
Defendant-Appellee.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice Gordon and Justice Reyes concurred in the judgment.

ORDER

Held: The circuit court did not err in granting summary judgment in favor of defendant. And the court did not err in denying plaintiff's motion to reconsider the summary judgment ruling.

¶ 1 This appeal involves a dispute concerning an option agreement for the purchase of a parcel of real estate and a building located on that real estate. Plaintiff, Wells Street Company, Inc., an Illinois corporation, was the prospective purchaser. The prospective seller was defendant, 1355 Wells, LLC, an Illinois limited liability company. The option agreement provided plaintiff the opportunity to purchase the parcel of real estate and building thereon commonly known as 1355 N. Wells Street, Chicago, Illinois. Donald Goldstein signed the option agreement on behalf of defendant. Arthur Holmer signed the agreement on behalf of the plaintiff.

¶ 2 On August 16, 2012, plaintiff entered into the option agreement and paid an option fee of \$370,000, which would be credited against the purchase price of \$3.7 million at closing. The option fee was nonrefundable unless defendant defaulted or refused to close.

¶ 3 On November 21, 2012, plaintiff exercised the option to purchase the subject property and agreed to close on the scheduled closing date of December 21, 2012. The agreement decreed that the closing take place no later than the scheduled closing date and that time was of the essence.

¶ 4 When plaintiff failed to deliver closing documents or timely deposit the funds necessary to effectuate closing at the scheduled date, defendant cancelled the option agreement and retained the option fee. Plaintiff filed a complaint and a subsequent amended complaint against defendant. Plaintiff set forth a number of reasons why it believed defendant had actually breached the option agreement and was therefore in default. Plaintiff claimed it had been ready and willing to fulfill the terms of the option agreement and to close on purchase of the subject property at the scheduled closing date but defendant's breach of the agreement prevented it from

performing all of its obligations under the agreement. Plaintiff sought specific performance of the agreement, or in the alternative, return of the option fee.

¶ 5 Defendant responded by filing a motion for summary judgment. In the motion, defendant argued that it had not breached the option agreement and that plaintiff was not entitled to specific performance or return of the option fee. The circuit court agreed with defendant.

¶ 6 Plaintiff now appeals from the circuit court order granting defendant's motion for summary judgment. Plaintiff also appeals from the court's subsequent order denying its motion to reconsider the order granting summary judgment in favor of defendant.

¶ 7 For the reasons that follow, we affirm. We recite additional relevant facts as we address each issue.

¶ 8 ANALYSIS

¶ 9 Plaintiff challenges the circuit court's rulings on summary judgment. Review of a circuit court's ruling granting summary judgment is *de novo*. *Sears, Roebuck & Company v. Acceptance Insurance Co.*, 342 Ill. App. 3d 167, 171, (2003). The purpose of summary judgment is not to try an issue of fact but to determine whether a triable issue of fact exists. *Banco Popular North America v. Gizynski*, 2015 IL App (1st) 142871, ¶ 37. Summary judgment is appropriate where the pleadings, depositions, and admissions on file, together with any affidavits and exhibits, when viewed in the light most favorable to the nonmoving party, indicate there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005 (c) (West 2000); *Bier v. Leanna Lakeside Property Ass'n*, 305 Ill. App. 3d 45, 50 (1999).

¶ 10 Plaintiff argues the circuit court erred in granting summary judgment in favor of defendant because the court erroneously disregarded contested issues of material fact in

concluding that defendant had not breached the option agreement. Plaintiff contends there remains a contested issue of fact as to whether defendant had notice that outstanding municipal code violations existed on the subject property, contrary to representations defendant made in paragraph 10 of the option agreement that it did not have notice of any administrative actions or governmental proceedings against the property.

¶ 11 In support of this contention, plaintiff points to a "Building Data Warehouse Report" from the City of Chicago Department of Buildings in which the City provides, among other things, information regarding the status of various municipal building code violations for certain property. The problem with plaintiff's reliance on this report is that the building code violations referenced in the report do not pertain to the parcel of property on which the subject building is located, but rather to a parcel of property with a building on it known as 1349 N. Wells Street, Chicago, Illinois. The building at 1349 N. Wells Street has a permanent real estate index number of 17-04-215-063-0000, and is described as a four story building with a porch, fire escape, and a recently constructed cinder block fence. No building on the subject parcel has four stories, contains a fire escape or porch, or has a cinder block fence on it. The subject building at 1355 N. Wells Street has a permanent real estate index number of 17-04-215-007-0000, and is described as a "one story store."

¶ 12 Plaintiff next contends there remains a contested issue of fact as to whether defendant delivered to plaintiff a written title insurance commitment for the subject property in conformity with the terms of the option agreement. Under the terms of the option agreement, defendant was obligated to furnish plaintiff with a written commitment for the purchase of title insurance from the Chicago Title Company, subject to certain exceptions enumerated in the agreement. Plaintiff argues that the defendant breached the option agreement by providing a title commitment

containing unpermitted exceptions. We do not believe a triable issue of fact exists as to this issue.

¶ 13 Our review of the record shows that on December 7, 2012, seventeen business days prior to the scheduled closing, defendant provided plaintiff with a preliminary title commitment issued by the Chicago Title Company. On December 20th, the morning before the scheduled closing, counsel for defendant confirmed with plaintiff's counsel that defendant was ready, willing, and able to waive or have deleted at closing, any non-permitted exceptions in the title commitment. On the scheduled day of the closing, prior to the time for closing, defendant provided plaintiff with an updated title commitment in the form required by the terms of the option agreement. Thus, as of the date of closing, there were no unpermitted exceptions in the title commitment. The title commitment defendant provided at closing conformed to the terms of the option agreement.

¶ 14 As a result, we find the circuit court properly entered summary judgment in favor of defendant regarding plaintiff's claims of breach of the option agreement, where there were no genuine issues of material fact remaining concerning this issue and the defendant as the moving party was entitled to judgment as a matter of law.

¶ 15 Plaintiff finally contends the circuit court erred in denying its motion to reconsider the grant of summary judgment. We disagree.

¶ 16 The decision to grant or deny a motion for reconsideration lies within the sound discretion of the circuit court and will not be disturbed absent an abuse of that discretion. *General Motors Acceptance Corp. v. Stoval*, 374 Ill. App. 3d 1064, 1078 (2007). An abuse of discretion occurs only when the court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the court. *Seymour v. Collins*, 2015 IL

118432, ¶ 41. Motions for reconsideration are designed to bring to the court's attention newly discovered evidence that was unavailable at the time of the original hearing, changes in existing law, or errors in the court's application of the law. *Continental Casualty Co. v. Security Insurance Company of Hartford*, 279 Ill. App. 3d 815, 821 (1996).

¶ 17 Plaintiff's motion for reconsideration essentially raised the same arguments it relied upon in opposing summary judgment, but provided new factual arguments and evidence in the form of several affidavits, which were not before the court at the hearing on the motion for summary judgment. The affidavits were presented in an effort to establish that defendant had notice that outstanding municipal code violations existed on the subject property. The affidavits were also presented in an effort to establish that even if defendant had furnished plaintiff with a title insurance commitment in conformity with the terms of the option agreement at closing, defendant nevertheless had an obligation to furnish a "clean" title commitment at an earlier date and that the failure to do so precluded summary judgment in defendant's favor. Plaintiff maintained that defendant had an "obligation" to cure any defects in the title commitment it furnished to plaintiff "15 days after receipt," and that the failure to do so negated summary judgment in defendant's favor.

¶ 18 "When a party seeks to have a motion to reconsider granted on grounds of newly discovered evidence, the movant must provide a reasonable explanation for why the evidence was not available at the time of the original hearing." *Stringer v. Packaging Corporation of America*, 351 Ill. App. 3d 1135, 1141 (2004). A circuit court "should not permit litigants to stand mute, lose a motion, and then frantically gather evidentiary material to show that the court erred in its ruling." *Gardner v. Navistar International Transportation Corp.*, 213 Ill. App. 3d 242, 248 (1991).

¶ 19 In light of this precept, a circuit court may disregard an affidavit presented in a motion for reconsideration if the material in the affidavit was available prior to a hearing on the motion for summary judgment and no explanation is given as to why this material was not offered in response to the motion before the hearing was held. *Id.* Similarly, our supreme court has determined that a new matter presented in a motion for reconsideration filed after a motion for summary judgment has been granted may be disregarded at the circuit court's discretion, but should not be considered by the court in the absence of a reasonable explanation as to why it was not available at the time of the original hearing. See *Delgatto v. Brandon Associates, Ltd.*, 131 Ill. 2d 183, 195 (1989).

¶ 20 Here, plaintiff gave no explanation as to why the material contained in the affidavits it submitted in its motion for reconsideration of the summary judgment ruling was not available or offered in response to the defendant's motion for summary judgment. In the absence of any such explanation, the circuit court was justified in denying plaintiff's motion for reconsideration. *Id.*

¶ 21 Accordingly, for the reasons set forth above, we affirm the judgments of the circuit court of Cook County.

¶ 22 Affirmed.