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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THOMAS A. MCDONALD d/b/a TAM REAL ESTATE,)	Appeal from the Circuit Court of Cook County.
)	
Plaintiff-Appellant,)	
)	
v.)	No. 15 L 4575
)	
CASTLEVIEW CONSTRUCTION, INC.,)	The Honorable
)	Sanjay T. Taylor,
Defendant-Appellee.)	Judge, presiding.

JUSTICE HYMAN delivered the judgment of the court.
Presiding Justice Neville and Justice Pucinski concurred in the judgment.

ORDER

¶ 1 *Held:* Real estate firm’s naming an unlicensed “designated agent” to sell property invalidated exclusive brokerage agreement.

¶ 2 TAM, a real estate brokerage firm, and Castleview, a Chicago property developer, entered into a listing agreement for one year on property owned by Castleview. The agreement named H. Robert Kocmond as the exclusive “designated agent” for selling the property. After nine months, Castleview entered into an exclusive brokerage agreement with another broker. Kocmond did not possess a license to broker property.

¶ 3 TAM sued Castleview alleging, among other claims, breach of contract. TAM argued that by entering into an exclusive brokerage agreement with another brokerage firm before the agreement with it expired, Castleview breached the agreement. Castleview moved to dismiss, arguing that because Kocmond was unlicensed during the relationship, the agreement between them was invalid.

¶ 4 We affirm. Both the Real Estate License Act of 2000 and the listing agreement require the designated agent have obtained a license to act as a real estate agent. As Kocmond was unlicensed, the agreement was unenforceable.

¶ 5 Background

¶ 6 TAM was attempting to buy four properties, when Castleview expressed interest in them. After several communications between TAM and Castleview, TAM orally offered to forego purchasing the properties if Castleview would agree to allow TAM to serve as its exclusive broker in selling the properties. Castleview orally agreed, TAM withdrew its offer for the properties, and Castleview purchased them.

¶ 7 Then the parties entered into a form contract prepared by the Chicago Association of Realtors entitled, “Exclusive Right to Sell Listing Agreement.” Under the agreement, TAM had the exclusive right to sell the properties for one-year, ending August 3, 2014. The agreement defined TAM as the “Broker,” Castleview as the “Seller,” and Kocmond as TAM’s designated agent. Specifically, the agreement stated: “(a) H. Robert Kocmond, a sponsored licensee of Broker; is Seller’s exclusive designated agent (‘Designated Agent’) under this Agreement with Broker, and (b) neither Broker nor other sponsored licensees of Broker will be acting as agent for Seller.”

¶ 8 While TAM was licensed to broker real estate, Kocmond was not. Shortly after entering into the agreement, Castleview requested that TAM and Kocmond delay marketing the properties until the following spring. In February 2014, Castleview agreed to allow TAM to place signs on the properties that included TAM’s contact information. In April 2014, Castleview entered into an exclusive listing agreement with another real estate broker.

¶ 9 TAM filed suit against Castleview alleging, among other claims, breach of contract. TAM asserted that Castleview’s termination of the agreement constituted a breach. Castleview moved to dismiss, arguing that because Kocmond was unlicensed, TAM could never have performed the agreement’s “Minimum Services” and, therefore, no breach had occurred. TAM admitted that Kocmond’s real estate license was suspended, but claimed TAM could still perform. The trial court dismissed the breach of contract claim with prejudice. Later, TAM filed a motion for reconsideration, which the trial court denied “as new arguments which could have been raised in response to the original motions to dismiss, and they weren’t.”

¶ 10 Standard of Review

¶ 11 We review decisions granting either a section 2-619 or a section 2-615 motion to dismiss *de novo*. *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116 (1993). Defendant argues that this appeal arises from the trial court’s ruling on a motion to reconsider, and the proper standard of review should be abuse of discretion. Under either standard, however, we come to the same decision.

¶ 12 Analysis

¶ 13 *TAM and Castleview Did Not Enter Into a Valid Contract*

¶ 14 Courts determine the validity of the contract as of the date it was made. *Pascal P. Paddock, Inc. v. Glennon*, 32 Ill. 2d 51, 53 (1964). Generally, a mere violation of the law in

executing the contract will not completely invalidate the contract. *Id.* at 53-54. But, where a violation is seriously injurious to the public, the contract may be considered invalid. *Id.*

¶ 15 The purpose of requiring a license is “to protect the public by assuring them of adequately trained practitioners.” *Tovar v. Paxton Community Memorial Hospital*, 29 Ill. App. 3d 218, 220 (1975) (discussing reasons Medical Practice Act requires physicians to have license to practice medicine). As a rule, “courts will not enforce a contract involving a party who does not have a license called for by legislation that expressly prohibits the carrying on of the particular activity without a license where the legislation was enacted for the protection of the public, not as a revenue measure.” *Kaplan v. Tabb Associates*, 276 Ill. App. 3d 320, 324-25 (1995) (quoting *Ransburg v. Haase*, 224 Ill. App. 3d 681, 684–85 (1992)). Essentially, if a person practices a profession that requires a license, an unlicensed person cannot recover fees for his or her services. *Ransburg*, 224 Ill. App. 3d at 685.

¶ 16 The legislature enacted the Real Estate License Act (RELA) to “evaluate the competency of persons engaged in the real estate business and to regulate this business for the protection of the public.” 225 ILCS 454/1-5 (West 2014). Courts liberally construe public safety statutes to afford broad protection for those the statutes intended to protect. *Kaplan*, 276 Ill. App. 3d 320 at 323. The RELA also provides that, “no compensation may be paid to any unlicensed person in exchange for the person performing licensed activities in violation of this Act.” 225 ILCS 454/10-15(a) (West 2014).

¶ 17 Under the agreement, only Kocmond could provide the minimum services to Castlevue. But, any action taken by him would violate the RELA and thus seriously injure the public. See *Pascal P. Paddock*, 32 Ill. 2d 51 at 53-54. Even if Kocmond did perform some minimum services, TAM could not expect to be compensated for these services because case law and the

RELA expressly forbid compensation to unlicensed individuals. See 225 ILCS 454/10-15(a) (West 2014); *Ransburg*, 224 Ill. App. 3d at 685. Accordingly, the agreement was unenforceable.

¶ 18 *TAM Could Never Become Castleview's Designated Agent*

¶ 19 TAM contends that because it was licensed, the agreement was still valid. “The primary objective in construing a contract is to give effect to the intent of the parties.” *Gallagher v. Lenart*, 226 Ill. 2d 208, 232 (2007). To determine the parties’ intent, courts will look to the language of the contract. *Thompson v. Gordon*, 241 Ill. 2d 428, 441 (2011).

¶ 20 The agreement provides that “(a) H. Robert Kocmond, a sponsored licensee of Broker, is Seller’s exclusive designated agent (‘Designated Agent’) under this Agreement with Broker, and (b) neither Broker nor other sponsored licensees of Broker will be acting as agent for Seller.” Under the agreement, TAM could represent a buyer, but could not serve as Castleview’s designated agent under any scenario.

¶ 21 TAM also argues that Kocmond could have renewed his license, but what he could have done is a hypothetical inconsistent with the facts. TAM concedes Kocmond’s license was suspended and never reinstated. Under the RELA and the agreement, the designated agent must be licensed; otherwise the agreement is unenforceable.

¶ 22 *Motion to Reconsider*

¶ 23 Finally, Castleview states that TAM’s appeal arises from TAM’s denial of its motion to reconsider and therefore this court should review the appeal under the abuse of discretion standard. See *Belluomini v. Zaryczny*, 2014 IL App (1st) 122664, ¶ 20 (trial court’s ruling on motion to reconsider is generally reviewed under abuse of discretion standard). But under either standard, this court will still come to the same decision and rule in favor of Castleview.

¶ 24 Affirmed.