

IN THE
 APPELLATE COURT OF ILLINOIS
 SECOND DISTRICT

ROBERTA L. JENNINGS,)	Appeal from the Circuit Court
)	of McHenry County.
Plaintiff-Appellee,)	
)	
v.)	No. 03--LA--402
)	
GEOFFREY P. BARON and ANGELA BARON,)	Honorable
)	Michael J. Sullivan,
Defendants-Appellants.)	Judge, Presiding.

JUSTICE O'MALLEY delivered the opinion of the court:

Geoffrey and Angela Baron appeal the trial court's order awarding damages to Roberta Jennings for breach of a real estate contract when the Barons did not complete a purchase of Jennings' home. The Barons contend that Jennings' failure to agree to proposed modifications under an attorney review provision in the contract rendered the contract null and void and thus they were not liable for later failing to purchase the property. We agree and reverse.

I. BACKGROUND

On August 22, 2003, the Barons signed a real estate contract for the purchase of Jennings' home. The contract included a provision allowing for a home inspection that excluded required repairs for matters of routine maintenance or for minor defects. The contract also contained the following attorney review provision:

"12. ATTORNEY REVIEW: The respective attorneys for the Parties may approve, disapprove, or make modifications to this Contract, other than stated Purchase Price, within five (5) business days after the Date of Acceptance. *** Any notice of disapproval or proposed modification(s) by any Party shall be in writing. If within ten (10) business days after Date of Acceptance written agreement on proposed modification(s) cannot be reached by the Parties, **this Contract shall be deemed null and void and earnest money refunded to Buyer upon written direction of the Parties to Escrowee. If written notice is not served within the time specified, this provision shall be deemed waived by the Parties and this Contract shall remain in full force and effect.**" (Emphasis in original.)

On August 27, 2003, Jennings' attorney sent a letter proposing modifications that would require the Barons to obtain a mortgage before September 22, 2003, and proposing a change to the real estate tax proration. On August 28, 2003, the Barons' attorney agreed to the modifications proposed by Jennings' attorney and requested an extension of the attorney review provision through September 3, 2003. Jennings' attorney agreed to the extension, and the home was inspected on August 29. On September 3, the Barons' attorney approved the contract provided that the following modifications were agreed to: (1) that the property was not appraised for less than the purchase price; (2) that Jennings repair specific problems revealed in the inspection report before closing and provide receipts from a chimney sweep, an HVAC contractor, and an electrician; and (3) that the HVAC contractor address heat exchange issues referenced in the inspection report.

Jennings did not respond, and on September 19, 2003, the Barons' attorney sent a letter declaring the contract null and void. On September 22, Jennings' attorney responded and stated that the requests in the September 3 letter were items of routine maintenance that were specifically

excluded under provisions of the contract. Jennings' attorney also provided information about matters that had been rectified, stated that Jennings did not intend to clean the chimney or the gutters, and stated that there was no indication that the furnace or heat exchanger was defective. On September 24, Jennings' attorney sent a letter confirming that the Barons' lender had approved a mortgage for the property and stating that Jennings had taken care of all issues in the home inspection report, with the exception of the gutters.

The Barons did not purchase the property and Jennings sued, alleging breach of contract. The Barons filed an affirmative defense, alleging that the contract was null and void under the attorney approval clause because the parties had not resolved proposed modifications to the contract. The Barons' motion for summary judgment was denied and a bench trial was held.

In a written order, the trial court found that the Barons did not validly terminate the contract. The court stated that the September 3 letter from the Barons' attorney did not state a deadline for a response and that the proposed modifications were requested to be completed before closing, which was scheduled after 10 business days from the date of the September 3 letter. The court then found that the matters from the inspection report were matters of routine maintenance and repair that were specifically excluded from the contract. As a result, the court found that the contract remained in effect and that the Barons breached it by failing to purchase the property. The court awarded Jennings \$55,237.07 in damages and also awarded costs. The Barons appeal.

II. ANALYSIS

The Barons contend that their attorney exercised the authority to seek modification of the contract within the proper time frame and properly declared the contract null and void when written agreement on the modifications was not reached within 10 business days. Jennings does not dispute

that a written agreement was not reached within 10 business days. She argues, however, that the requests did not meet the legal definition of "proposed modifications" because they concerned items that were specifically excluded under the home inspection section of the contract.

Interpretation of contract language is a question of law, which we review de novo. Patel v. McGrath, No. 2--06--0472, slip op. at 4 (June 29, 2007). We recently addressed a similar attorney approval clause and determined that when the initial contract has not been specifically rejected, a contract is formed upon acceptance of the initial offer and that an attorney approval clause allowing proposed modifications acts as a condition subsequent. Thus, the parties enter into a valid and binding contract with a condition subsequent that allows the parties to approve, disapprove, or propose modifications to the contract in the manner provided. See Patel, slip op. at 5.

Here, the contract required that the attorneys disapprove the contract or propose modifications in writing within five business days. If no such notice were served within that period, the attorney review provision would be waived and the contract would remain in effect. However, the parties agreed in writing to extend the review period and do not dispute that the Barons' attorney's September 3 proposed modifications--if they were proposed modifications--were timely.

The contract next provided that it would be null and void if written agreement on proposed modifications could not be reached within 10 business days. The parties do not dispute that written agreement was not reached within 10 business days.¹ In determining that the contract nevertheless

¹Although the contract required agreement within 10 business days of the "Date of Acceptance," the parties argue as if the agreement were required within 10 business days of the date of the proposed modifications. We need not address this issue, as agreement did not occur by either deadline.

remained in effect, the trial court relied on the fact that the September 3 letter from the Barons' attorney did not provide a deadline for a response and that the repairs were not required to be completed within the 10-day period. But the contract did not require that the Barons provide a deadline for a response. That deadline--10 business days--was already in the contract. Nor did the fact that the request was for repairs to be completed before closing affect the contractual language that required the parties to reach a written agreement on the proposed modifications within 10 business days. Here, no written agreement was reached within the 10 days, and the contract was null and void.

Jennings contends that the "proposed modifications" dealt with new matters that were specifically excluded from the original contract. If true, the question would arise whether the proposed modifications were mere requests for a better offer instead of actual proposed substitutions of provisions of the original contract. See generally Patel, slip op. at 6-7. But here, aside from the repair requests, there was also a specific proposed modification to the contractual provision concerning the mortgage contingency clause that would require an appraisal of at least the full purchase price. Written agreement on that proposal did not occur within the 10-day period. Thus, we need not address whether the repair requests were "proposed modifications," because under the terms of the attorney review provision, the failure of the parties to agree in writing to the proposed modification of the mortgage contingency clause within 10 business days rendered the contract null and void. At that point, the Barons were not obligated to complete the purchase, and the trial court erred when it denied their motion for summary judgment and awarded a judgment against them.

III. CONCLUSION

The judgment of the circuit court of McHenry County is reversed.

Reversed.

No. 2--06--0826

BYRNE and CALLUM, JJ., concur.